

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

18th
 DATED THIS THE 18th DAY OF FEBRUARY, TWO THOUSAND NINETEEN

(13/02/2019)

PRESENT:

+
 THE HON'BLE MR. T. JACOB, MEMBER (A)

OA/310/01869/2014

1. JIPMER Faculty Association
 rep., by its President
 Dr. R. Raveendran,
 S/o N. Ramasamy,
 CII/4. JIPMER, Pondicherry-6.
2. Dr. S. Sarath Chandra,
 Professor of Surgery,
 S/o S. Chandrasekhara Sastry,
 Flat T-2, Plot 59/60,
 5th Cross, Sathya Nagar,
 Pondicherry 605 013. ...Applicants

-versus-

1. Union of India rep., by
 Secretary to Government,
 Ministry of Health and Family Welfare,
 Nirman Bhawan,
 New Delhi 110 001.
2. The Director,
 Jawaharlal Institute of Post Graduate
 Medical Education and Research (JIPMER),
 Dhanvantari Nagar,
 Puducherry 605 006. ...Respondents



By Advocates:
M/s C. Vigneswaran, for the applicant.
Mr. M.T. Arunan, for the respondents.

ORDER

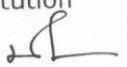
(Pronounced by the Hon'ble Mr. T. Jacob, Member (A)

This OA has been filed by the applicants under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- (i) To quash the order of the 2nd respondent in proceedings No.JIP /DD(A)/Misc/2014-2015 dated 27.11.2014 and
- (ii) Consequently direct the 1st and the 2nd respondents to grant Travelling Allowance at the rate of Rs.7000/- + D.A.
- (iii) and further forebear the respondents from making any recoveries in lieu of the impugned order.and
- (iv) consequently to pass such further or other orders as deemed fit in the facts and circumstances of the case.

2. The brief facts of the case, according to the applicants, are as follows:-

The applicants are working as Professors in the 2nd respondent Institution. During 2008, JIPMER was declared as one of the Institutes of national importance and was conferred with an autonomous status by an Act of Parliament and the same was enacted as Jawaharlal Institute of Post Graduate Medical Education and Research, Puducherry Act, 2008. The 2nd respondent Institution being on par with other Institutions of national importance namely AIIMS, New Delhi, PGIMER, Chandigarh have adopted the same rules and regulations for their staff on par with other two institutions. Further it was decided by the Standing Finance Committee of the 2nd respondent Institution



that as and when the benefits for the faculties of AIIMS, New Delhi/PIGMR, Chandigarh are revised, the same shall be extended to the faculty of 2nd respondent. The applicants submit that as per the VI CPC, officers who were drawing a Grade Pay of Rs.10,000/- and above and who were eligible to use staff car were entitled to receive Transport Allowance (+D.A) at the rate of Rs.7000/- per month in lieu of Staff Car. Pursuant to the same, the applicants were granted T.A., at the rate of Rs.7000/- from 2008.

3. The grievance of the applicants are that during May 2014, without any notice, the respondents reduced the T.A., from Rs.7000/- to Rs.1600/-. Thereafter the respondents issued the impugned order on 27.11.2014 reducing the pay of the applicants in the month of July and further ordered recovery of the excess amount paid. Hence this OA.

4. The applicants would further submit that the courts in a catena of decisions namely *Sahib Ram v. State of Haryana 1995 SCC (L&S) 248*; *Shyam Babu Verma v. Union of India (1994) 2 SCC 521*; *Unioinh of India v. M. Bhaskar, (1996) 4 SCC 416*; *V. Gangaram v. Director, (1997) 6 SCC 139*; *Col. B.J. Akkara (Retd) v. Govt. Of India, (2006) 11 SCC 709*; *Purshottam Lal Das v. State of Bhihar, (2006) 11 SCC 492*; *Punjab National Bank v. Manjeet Singh, (2006) 8 SCC 647*; and *Bihar SEB v. Bijay Bhadur, (2000) 10 SCC 99* has held that

(a) if the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and

(b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which



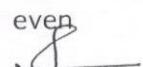
is subsequently found to be erroneous, the same cannot be recovered.

5. The respondents have filed a detailed reply statement in which it is stated that the applicants were given Transport Allowance (+ D.A.) at the rate of Rs.7000/- per month from 2008 to 2014 in lieu of Staff Car. The internal audit wing of the 1st respondent in its report dated 2.11.2012 had raised objection that Group 'A' officers in the Grade Pay of Rs.10000/- and above are drawing Transport Allowance @ Rs.7000 per month instead of Rs.1600/- per month even though they are not entitled for use of Staff Car in terms of OM dated 25.1.1994. As per rules, a Government employee has to reside within the radius of 8 kms from the duty place and the Government also fixed the eligibility of Transport Allowance based on the Grade Pay of the Government employee. The Director General of Audit (Central) noticed that inspite of internal audit objection, the irregular withdrawal of Transport Allowance continued which resulted in excess payment of Rs.3.25 Crores from September 2008 to February 2014 and that the continued payment of Transport Allowance at enhanced rate to ineligible officers will result in further excess payment. Thereafter, the 2nd respondent Institute issued a circular dated 4.7.2014 stating that Transport Allowance in respect of the applicants had been regularised from May 2014 and the applicants would be entitled to receive only Rs.1600/- per month. The Principal Director General of Audit vide letter dated 23.10.2014 addressed to the 1st respondent categorically held that officers drawing the Grade Pay of Rs.10000 and Rs.12000 and those in the HAG+ scale are entitled to use the



official car in terms of OM dated 25.1.2014 and directed to immediately stop payment of Transport Allowance at the rate of Rs.7000/- per month to all non entitled faculty members and to make payment at the normal rate as per their eligibility and to recover the excess payment of TA already made to those non entitled faculty members. Based on the above instructions, the 2nd respondent stopped payment of TA at the rate of Rs.7000/- p.m., to all the faculty member in the Pay Band IV Rs.37000-67000 plus AGP of Rs.10000/- and Rs.10500/- as well as faculty members who are in the Pay Band V of Rs.67000-79000 with AGP except the Director and Additional Superintendent of the Institute from the month of December 2014 and further steps were initiated to recover the excess payment of Transport Allowance vide impugned order dated 27.11.2014. Any amount paid/received without authority of law can always be recovered. Hence the respondents pray for dismissal of the OA. In support of their case, the respondents have relied upon the decision of the Hon'ble Supreme Court in the case of Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors dated 17.8.2012.

6. The applicant has filed rejoinder objecting to the reply of the respondents and stating that the reply ought to be returned to the respondents for the simple reason that the same has been filed by one of the members of the Applicant Association namely Dr. Subash Chandra Parija who is the present Director of JIPMER. Further he has also suffered reduction of pay and consequent recovery and there would be conflict of interest in allowing him to accept his reply filed on behalf of the respondents. The applicant would further submit that for over six years, the Transport Allowance has been paid by the respondents and even



assuming that the payment was wrongly made, the consequent recovery by the respondents is highly illegal in view of the latest Judgement of the Hon'ble Supreme Court in Rafiq Masih's case and also the OM issued by the DOP&T dated 2.3.2016.

7. Learned counsel for the applicants would submit that the T.A. which was paid was an allowance and the same was spent for the purpose for which it was paid. Hence recovery of the so called excess amount paid would adversely affect the applicants and would cause undue hardship to them. He also relied on the decision of the C.A.T. Principal Bench in O.A.No.3858/2016 dated 31.7.2017 in the case of *A.K. Panda v. Union of India and Anr.* and the decision of the Hon'ble Delhi High Court in W.P.(C) 5555/2013 dated 4.9.2013 in the case of *Union of India v. J.S. Sharma and Ors.* in support of his submissions.

8. We have heard the learned counsel for the respective parties and perused the pleading and documents on records.

9. First as to the objection of the Applicant Association as to the competence of the signatory to the counter, viz., the Director JIPMER as he is also one of the members of the Association. This objection has to be dealt with by analysing the position of the signatory. He is a member of the Applicant Association but he is not holding any executive post in the Association. Again, his signing the counter is in his official capacity as the Director of JIPMER and the doctrine of necessity applies to the facts of this case. It has been held by the Apex Court in **Rajendra Shankar Shukla vs State of Chhattisgarh (2015) 10 SCC 400** as under:-

"The doctrine of necessity applies not only to judicial matters but also to quasi-judicial and administrative matters."



Thus the feeble objection to the competence of the Director JIPMER to file counter on behalf of the respondent is rejected.

10. As regards merits of the matter, it is pertinent to mention here that while examining as to whether any excess payment erroneously paid to an employee is recoverable or not, apart from the rule on the subject and the decisions of the Courts, the fact that it is the public money which has been paid to the employees has to be kept in view. Tax payer's money is retained by the Government as a trustee and the same is meant to be expended for the general welfare of the general public at large. The independence of the C & AG is the palladium to secure the interest of the public ex-chequer.

11. The main thrust of argument of the counsel for the applicant is

- (a) that the categorisation of posts is based on the Pay Band or the Pay Scale and that once the Grade Pay of the applicants being officers of the organised Group 'A' service is equivalent to officers of level of Joint Secretary and above, they are also entitled for drawing the Transport Allowance at the rate of Rs.7000/- + D.A., as given to officers at the Joint Secretary level in Government of India.
- (b) the payment of T.A., at the rate of Rs.7000/- + D.A., was made by the respondents themselves and not by virtue of any misrepresentation or fraud on the part of the applicants and hence no recovery could be made.

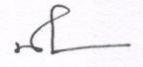


(c) The Judgment of the Apex Court in the case of Rafiq Masih (supra) and the DoPT order dated 02-03-2016 fully apply to the case of the applicants.

12. Whether the above grounds justify the claim of the applicants is the question to be ruminated.

13. As per Rule 209 (6) (iv) (a) of the General Finance Rules "All grantee Institutions or Organisations which receive more than 50 per cent of their recurring expenditure in the form of grants-in-aid should ordinarily formulate terms and conditions of service of their employees which are by and large not higher than those applicable to similar categories of employees in Central Government" Jawaharlal Institute of Postgraduate Medical Education and Research (JIPMER), Puducherry being one such institution, has also vide its Regulation 43 of 2008, adopted the rules as applicable to the Central Government servants in respect of general conditions of service, pay, allowances including travelling allowance, leave salary, joining time, foreign service terms, etc.,

14. Ministry of Finance, Government of India (GOI) has issued orders in August 2008 that officers drawing a Grade Pay (GP) of Rs.10,000/- & Rs.12,000/- and those in the HAG + scale, who are entitled to use the official car in terms of OM No.20 (5) EII A/93 Dt 28.01.1994 shall be given the option to avail themselves of the staff car for commuting from residence to office and vice-versa or to draw the transport allowance at Rs.7,000/- per month plus dearness allowance thereon to take effect from 1st September 2008.

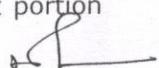


15. Accordingly, the Director and Medical Superintendent of JIPMER are the only two officers who are eligible for staff car. However, the officers drawing a Academic Grade Pay (AGP) of Rs.10,000/- and Rs.10,500/- though not entitled for use of official car in terms of OM dated 28.01.1994 have been paid transport allowance of Rs.7,000/- per month plus DA thereon as against the eligible Transport Allowance of Rs.1,600/- per month (applicable for Puducherry).

16. The order relating to the subject matter is, as stated by the respondents is OM dated 28-01-1994. The caption of the said OM clearly reflects officers entitled to use the Staff Cars. The subject is "Use of Staff Cars by senior officers of the Government of India, Heads of Departments of the Central Government in the field in the senior Administrative Grade and above and Chief Executives of Statutory/Autonomous bodies". It is clear on perusal of the records that only Director and Medical Superintendent of Jawaharlal Institute of Post Graduate Medical Education and Research (JIPMER) alone are eligible for staff car in terms of OM dated 28.1.1994. However, the officers drawing a Grade Pay of Rs.10,000 and Academic Grade Pay (AGP) of Rs.10,500/- though not entitled for use of official car in terms of the above OM were on receipt of TA of Rs.7000/- per month plus DA therein as against the eligible TA of Rs.1600/- per month. The allegations of the applicants that they have not been informed of revising the TA from Rs.7000 to Rs.1600/- and recovery thereof of the excess payment is totally false. The respondents had issued a circular dated 4.7.2014 to the faculties of JIPMER regarding over payment of TA and initiated recovery thereof based on the audit objection by the Director General of Audit.



17. The Hon'ble Supreme Court in the case of Chandi Prasad Uniyal & Ors., vs. State of Uttarkhand & Ors., dated 17.8.2012 had observed that "the excess payment of public money which is often described as tax payers money which belongs to neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Further, the amount involved is only TA and cannot be equated with salary which is paid for the work rendered. Therefore, the aspect of representation or misrepresentation on the part of the applicant will not have much of significance. Question to be asked is whether excess money has been paid or not may be due to bona fide mistake. Possibly, effecting excess payment of public money by Government officers may be due to various reasons like negligence, carelessness, non-univocal instructions entailing more than one interpretation, confusion, favouritism etc., because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment." The same has been considered by the High Court of Punjab and Haryana and others vs. Jagdev Singh in Civil Appeal No.3500/2006 decided on 29.7.2016, the relevant portion of which is reproduced below:-



"9 The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10. In State of Punjab & Ors. etc., vs. Rafiq Masih (2015) 4 SCC 334, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law.

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) 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.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

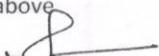
11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12. For these reasons, the judgement of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years".

17 The Principal Bench of the Tribunal in their order dated 13-05-2014 in OA No. 4062/2013

(Radhacharan Shaikya & others vs Union of India) on an identical issue has held as under:

8. Respondents in their reply state that the 1994 circular was for a specific purpose to provide facility to officers of the rank of Joint Secretaries and above

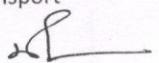


in the ministries for the use of staff car for journeys from their residence to office and back. That order was not made applicable to everybody who draws the same pay scale as the Joint Secretary. In fact, clarification dated 5.03.2009 also states the same thing that mere getting Grade Pay of Rs.10000/- does not entitle an officer to Rs.7000/- transport allowance and they would continue to draw Rs.3200/- p.m. towards TA. The respondents also clarified that while granting non-functional upgradation in terms of OM dated 24.04.2009, it was made clear that this will be a purely non-functional upgradation, personal to the officer and would not bestow any right to the officer to claim promotion or deputation benefits based on non-functional upgradation in such a manner. It is clarified that the applicants are not entitled to use official cars for coming to office and to go back home. Hence the question of Rs.7000/- p.m. transport allowance to the applicants does not arise.

9. The respondents have also cited the judgment of the Hon'ble Supreme Court in Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others, (2012) 8 SCC 417 in which the Court has held that in case of irregular/ wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/ pension. Similarly our attention was drawn to OM dated 6.02.2014 issued by the DoP&T based on this judgment of the Hon'ble Supreme Court. The respondents also relied on the judgment of the Hon'ble High Court of Delhi in Union of India and anr. Vs. JS Sharma and ors, WP) No.5555/2013 in which the Court again reiterated the principle enunciated by the Hon'ble Supreme Court in Chandi Prasad Uniyal (supra). Respondents also referred to the judgment of this Tribunal in J.S. Sharma Vs. Director General Works in OA 363/2012 in which the question of transport allowance at the rate of Rs.7000/- per month had been raised. The Tribunal held as follows:

"13. The OM dated 23.04.2009 (Annexure A3) under which the applicants got the non-functional upgradation and the consequential Grade Pay of Rs.10000/- itself clearly reveals that the upgradation would not bestow any right to the officers to claim promotion or deputation benefits and that the same is personal to the officer. In view of the same, the contention of the applicants that they are entitled for the Transport Allowances at the rate of Rs.7000/- per month plus DA thereon is untenable and cannot be accepted.

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."

18. We are in respectful agreement with the decision of the Principal Bench. Doctrine of Precedence, as held by the Apex Court in the case of Sub Inspector Roop Lal vs Lt. Governor (2000) 1 SCC 644, wherein it has been held as under:-

12.*Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement.*"

19. In the conspectus of the above facts and circumstances of the case, we do not find sufficient ground to interfere with the recovery order of the second respondent dated 27.11.2014.

S.R

20. In the result, the OA is liable to be dismissed as devoid of merit and is accordingly dismissed. The stay granted by this Tribunal on 10.12.2014 hereby stands vacated. No order as to costs.