



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA No. 4016/2014
With
OA No. 205/2016**

New Delhi, this the 20th day of November, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

1. OA No. 4016/2014

1. All India G. D. M.O. Association,
Office at: Flat No. 586, Laxmi Bai Nagar,
New Delhi – 110022.
Through its General Secretary, Dr. Jai Prakash,
S/o Dr. Shankta Prasad, aged about 59 yrs,
Sr. CMO In-charge, Working at Parliament
House, New Delhi.
2. Dr. Ritu Mathur,
W/o Sh. Nirvesh Mathur,
Aged about 58 years,
Working at Office of Addl. Director, CGHS,
East Zone, Lakshmi Nagar, Delhi.
3. Dr. Arvind Kumar,
S/o Sh. J. C. Goel, Aged about 54 yrs,
Working at CGHS Medical Store Depot,
Udayan Marg, Gol Market,
New Delhi – 110001.
4. Dr. Meenakshi Dubey,
W/o Dr. N. K. Dubey,
Aged about 55 years,
Working at office at Additional Director,
CGHS South Zone, Sector-8, R. K. Puram,
New Delhi.
5. Dr. Bidhu Bhushan,
S/o Ram Chander Prasad Choudhary,
Aged about 54 years,
Working at Office of Additional Director CGHS
(HQ),

Sector 12, R. K. Puram, New Delhi.

...Applicants



(By Advocate: Mr. Amit Anand Tiwari with Mr. Shaswat Singh)

Versus

Union of India & Ors.

1. Union of India,
Through Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan, C-Wing,
New Delhi – 110001.
2. Addl. Secretary & Director General (CGHS),
Ministry of Health & Family Welfare,
Government of India,
Nirman Bhavan, C-Wing,
New Delhi – 110001.
3. Director CGHS,
Ministry of Health & Family Welfare,
Government of India,
Nirman Bhavan, C-Wing,
New Delhi – 110001.

...Respondents

(By Advocate: Mr. Mahendra Vikram Singh with Ms. Ashita Kumar for Respondent No. 01 and 02)

2. OA No. 205/2016

1. Safdarjung Hospital Medical Officers Association,

Office at: Ward NO. 25,
IInd Floor, Dept of Surgery,
Safdarjung Hospital,
Ring Road, Opposite AIMS Hospital,
Ansari Nagar West,
Safdarjung, New Delhi – 110029.

Through its President,
Dr. Vimal Bhandari,



S/o Sh. Karan Singh Bhandari,
Working as Consultant Surgeon,
Department of Surgery,
VMMC & Safdarjung Hospital,
New Delhi.

2. Dr. Ram Manohar Lohia Doctors' Welfare Association,
Office at: Dr. Ram Manohar Lohia Hospital,
Baba Kharak Singh Marg,
Near Gurudwara Bangla Sahib,
Connaught Place, New Delhi – 110001.

Through its President,
Dr. Rana Anil Kumar Singh,
S/o Sh. Late Kameshwar Prasad Singh,
Working as Consultant Surgeon,
Department of Surgery,
Dr. RML Hospital, New Delhi.

3. Dr. Anil Kumar Mittal,
S/o Sh. Late S. M. Mittal,
Working as: Director – Professor and Head,
Department of Forensic Medicine,
VMMC & Safdarjung Hospital,
New Delhi - 110029.

4. Dr. Ajay Kumar Goila,
S/o Late Sh. M. M. Goila,
Working as,
Additional Medical Superintendent,
Dr. RML Hospital,
Baba Khadaksingh Marg,
New Delhi – 110001.

...Applicants

(By Advocate: Mr. Amit Anand Tiwari with Mr. Shashwat Singh)

Versus

1. Union of India,
Through Secretary,
Ministry of Health & Family Welfare,
Government of India,
Room No. 156-A, Nirman Bhavan, C Wing,
New Delhi – 110001.



2. Director General of Health Services,
Ministry of Health & Family Welfare,
Government of India,
Nirman Bhavan,
New Delhi – 110001.

3. Director General of Audit (Central
Expenditure),
D G A C R Building,
Indraprastha Estate,
New Delhi – 110002.

...Respondents

(By Advocate: Mr. Mahendra Vikram Singh with
Ms. Ashita Kumar for Respondent No. 01 and 02)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman:-

In these 02 OAs, common questions of fact and law are involved. Hence, these are disposed of through a common order.

2. The 1st applicants in the OAs are Associations of General Duty Medical Officers of the Central Health Services and the other applicants are their members. The Ministry of Finance, Department of Expenditure issued an OM dated 29.08.2008 revising the Travelling Allowance (TA). It was mentioned that the officers drawing grade pay of Rs. 10000/- and Rs. 12000/- as well as those in HAG+ scale and who are entitled to use the official car, shall be given an option to avail the



existing facility or to draw the TA @ Rs. 7000/- + Dearness Allowance (DA). It is stated that 533 officer who were members of the Association were put in the grade pay of Rs. 10000/- by way of Dynamic Assured Career Progression (DACP) scheme and, thereafter, they were extended the TA of Rs. 7000/- + DA, by the respective authorities.

2. The payment of TA in terms of OM dated 29.08.2008 was the subject matter of an Audit. It was found that many officers who were otherwise not entitled to the car facility, were extended such benefit only on the ground that they are in the grade pay of Rs. 10000/-. Exception to this was taken and ultimately an order dated 10.09.2014 was issued by the Directorate of CGHS, insisting that the TA drawn by SAG officer with grade pay of Rs. 10000/- shall be reduced to Rs. 3200/- + DA per month, instead of Rs. 7000/- per month and the differential amount shall be recovered. This OA is filed challenging the OM dated 10.09.2014.

3. The applicants contend that the benefit of TA of Rs. 7000/- + DA was granted strictly in terms of OM dated 29.08.2008 and there was



absolutely no basis for reducing it to Rs. 3200 + DA, much less to direct recovery. It is also stated that several officers who were of the same rank as of the applicant are extended the benefit of Car facility and there is discrimination against the members of the association. It is also stated that directing of recovery is totally impermissible under the law in view of the judgment of Hon'ble Supreme Court in **State of Punjab & Ors. Vs. Rafiq Masih & Ors.** 2014 (8) Scale 613. Several other grounds are also pleaded.

4. On behalf of respondents a counter affidavit is filed. It is stated that OM dated 29.08.2008 is very clear in its purport, viz that payment of TA of Rs. 7000/- shall be only as an alternative to use of official car facility; and the question of an officer being paid Rs. 7000/- per month + DA only on the ground that he is in the grade pay of Rs. 10000/- does not arise. As regards recovery it is stated that once the amount was wrongfully paid to the applicants the same is required to be refunded. It is also stated that the judgment of Hon'ble Supreme Court in **Rafiq Masih's** case is not



applicable to the members of applicant's association since they are Group- 'A' officers,

5. We heard Mr. Amit Anand Tiwari with Mr. Shashwat Singh, learned counsel for the applicants and Mr. Mahendra Vikram Singh with Ms. Ashita Kumar for Respondent No. 01 and 02.

6. Depending upon the status of the officers in the administration, they are provided the official car facility or TA. In OM dated 29.10.2008, certain amendments were made in this behalf. Apart from revising the rates, it was directed that if the officers with grade pay of Rs. 10000/- and Rs. 12000/- and those in HAG+ Scale were entitled to use official car, they shall have the option to use that facility, or to draw the TA of Rs. 7000/- per month + DA. The relevant para, reads as under:-

“3. Officers drawing grade pay of Rs. 10000 & Rs. 12000 and those in the HAG + Scale, who are entitled to use of official car in terms of O. M. NO. 20 (5) -E-II(A)/93 dated 28.1.94 shall be given the option to avail themselves of the existing facility or to draw the Transport Allowance at the rate of Rs. 7000/- p.m. plus dearness allowance thereon.”

7. There is absolutely no ambiguity as to the purport of the paragraph extracted above. The



mere fact that an officer is in grade pay of Rs. 10000/- or Rs. 12000/- or HAG+ does not entitle them to draw the TA of Rs. 7000/-. It is only when he was entitled to use the official car in terms of relevant OM, that he can choose the alternative. Since the OA is filed by Associations it is very difficult to ascertain whether their members were entitled to the use of official car or whether they have chosen the alternative, by exercising the option.

8. Instances of unauthorized drawl of TA have come to the notice in the Audit. In Part-II-B of the order dated 24.03.2014 passed by the office of the Director General of Audit (Annexure A-9), the following was observed:-

“Para 1 Over-payment of Transport Allowance of 39.97 lakh to Doctors.

As per Government of India Decision No. 2 below rule 8 of staff car rules-officers of the level of Joint Secretary and above, who have been provided with the facility of staff car for commuting between office and residence on prescribed payment basis under Ministry's O.M. No. 20 (5)-E.II (A)-93 dated 28-01-1994 may be given an option either to avail themselves of the existing facility or to switch over to the payment of Transport Allowance, as admissible under these orders. In case they opt for the later, they may be paid the allowance at rates as applicable to them, subject to the condition that the existing facility of staff car shall be withdrawn from the date they opt for the allowance, in case they opt for the former, the allowance shall not be admissible to them and



they would not be required to make any payment for the facility of staff car between residence and office.

Principal Bench. Central Administrative Tribunal, Delhi in its judgment (J. S. Sharma vs Director General Works on 5 February, 2013, O.A. No. 363/2012) stated, "A careful reading of the OM dated 3.10.1997 as amended by OM dated 22.02.2002 clearly reveals that the officers of the level of Joint Secretary and above who have been provided with the facility of staff car for commuting between office and residence on prescribed payment basis under OM dated 28.01.1994 and who are having option to avail themselves of the existing facility or to switch over to the payment of TA, as admissible under these orders, are only entitled for the Transport Allowance at the rate of Rs. 7000/- per month plus DA thereon. Just because of granting of Grade Pay of Rs. 10000/- the applicants cannot claim all the benefits or allowances entitled by the Joint Secretary level officers. Those officers who were promoted to the Joint Secretary grade on regular basis alone can claim the aforesaid benefit but not other officers even though drawing the same Grade pay of Rs. 10000/-.

A review of the Pay Bill Registers of Group 'A' officers of Additional Director (CGHS). East Zone for the year 2011-12 & 2012-13. Del revealed that 25 Group "A" officers drawing grade pay of Rs. 10000 and above were drawing Transport Allowance @ Rs. 7000 p.m. instead of Rs. 3200 p.m."

9. It is in this background, that the impugned order dated 10.09.2014 was issued. It read as under:-

"OFFICE MEMORANDUM

Subject: Regarding Transport Allowance to CHS officers posted in CGHS and drawing Grade pay @ Rs. 10,000/-

With reference to the clarification received from the Directorate General of CGHS, (CGHS-I Section), Ministry of Health & Family Welfare vide letter No. A-27017/01/2014-CGHS.I dated 19.8.2014. It is instructed to all the Zones/Offices of CGHS Delhi that with effect from



September, 2014 onwards, the Transport Allowance drawn by SAG Officers with Grade Pay Rs. 10,000/- may be limited to Rs. 3200/-+ DA per month instead of @ Rs. 7,000/- + DA per month.

All the Zones/Offices are also instructed to identify all officers other than the list in Annexure provided by the CAG Audit Team and inform the Admn. Officer, CGHS (GE) R. K. Puram, Sector – 12, New Delhi and not totally rely on the list provided by Audit Team. It is also stated that an attempt be made to identify all the functional post of SAG Officers in each Zones/offices.”

10. Except that it has aimed at ensuring strict and proper implementation of the OM dated 29.08.2008, the impugned order did not bring about any change. Hardly there exists any scope for ambiguity in the entire episode. The implementation of the scheme is not shrouded in any uncertainty. The question of an officer of a particular grade pay drawing the TA of Rs. 7000/- would arise, if he is entitled to the facility of official car. Once the facility is not available to him, he cannot draw the T.A. of Rs. 7000/- per month. If for any reason he has drawn the TA, not being otherwise entitled to, the inescapable conclusion is that the amount should be refunded.

11. Another plea raised by the applicant is about the manner in which the grade pay of Rs.



10000/- was extended to its members. Here again, individual case needs verification. 533 officers were extended the benefit thorough the method of DACP. The respondents insisted that an officer can be put in the grade pay of Rs. 10000/- or Rs. 12000/- as a measure of regular promotion and not otherwise. The question, as to whether, the DACP can be treated as regular promotion, should not detain as here, once we find that the drawl of TA of Rs. 7000/- is not permissible simply because an officer is in the grade pay of Rs. 10000/-, and it is linked with his entitlement to use the official car.

12. In the context of recovery, reliance is placed on the judgment in **Rafiq Masih's** case. The Hon'ble Supreme Court has summarised certain situations where recoveries from certain categories of employees would not be permissible under law. They are Class -III and Class -IV employees or employees who have already retired from service or where the excess payment has been made for a period, exceeding five years. We do not find that the ratio of the judgment of Hon'ble Supreme Court applies to present case. The applicants are



fairly senior officers in the Ministry of Health and if the TA has been wrongfully drawn by them, it needs to be refunded. They cannot be compared to low class employees. Further it needs verification, as to whether, any member of the association was entitled to official car facility. We find it difficult to grant relief in general terms.

13. We, therefore, dismiss the OA. We, however, make it clear that in case any officer who happens to be a member of the Applicant Associations, covered by adjudication in this OA was entitled to use official car facility, it shall be open to him to satisfy the concerned authority in the context of recovery. There shall be no order as to costs.

(Mohd. Jamshed) (Justice L. Narasimha Reddy)
Member (A) Chairman

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