

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: January 19, 2018

+ **W.P.(C) 6237/2017**

SUMAN KUMAR Petitioner

Through: Mr. Abdhesh Chaudhary, Mr
Nilendu Vatsyayan and Mr. Yogesh Kumar
Keshari, Advocates

versus

CENTRAL WAREHOUSING CORPORATIONRespondent

Through: Mr. K.K. Tyagi, Mr. I. Ahmad and
Mr. Anoop Kumar, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. Petitioner's counsel submits that no rejoinder is required to be filed and this matter can be finally heard.
2. Petitioner is a differently-abled person, who is said to have retired as Senior Assistant Manager way back in the year 2012. The claim in this petition is regarding 5% additional transport subsidy for the period from 26th November, 2008 upto 30th April, 2012. Reference is made to Office Order of 9th April, 2010, which puts ceiling of 40% on the perquisites/allowances. Alongwith aforesaid Office Order of 9th April, 2010, petitioner has placed on record the format of perquisites/allowances and option form, which indicates that transport subsidy of 15 % is for

general employees whereas for the physically impaired employees, there is an addition of 5% towards transport subsidy allowance.

3. Learned counsel for petitioner draws attention of this Court to Office Memorandum (*hereinafter referred to as O.M.*) of 26th November, 2008 of Government of India (*Annexure P-2*) to submit that the maximum ceiling for payment of such allowances is 50%. So, it is submitted that 5% extra for differently-abled employees ought to be granted over and above 40% of the basic pay, which petitioner is already getting.

4. Learned counsel for respondent has drawn attention of this Court to Clause-17 of O.M. of 26th November, 2008 (*Annexure P-2*) to point out that each of the Central Public Sector Enterprises is required to consider the proposal of pay revision, allowances, etc., based on their affordability to pay, and to submit it to the concerned department for approval. Thus, it is submitted by respondent's counsel that in view of financial viability of respondent-Corporation, it is restricted to 40% and it is the choice of petitioner to have additional 5% transport subsidy and to give up any other allowances.

5. Learned counsel for petitioner maintains that in view of order of 27th May, 2016 (*Annexure P-8*) of the Chief Commissioner for Persons with Disability, 5% additional transport subsidy is payable to petitioner as O.M. of 26th November, 2008 permits ceiling of 50% of the basic pay. It is submitted that petitioner's Representation of 23rd January 2012 (*Annexure P-4*) has not been responded to by respondent and in the counter-affidavit filed, no reason is forthcoming as to why the cap of 40% on perquisites/allowances cannot be enhanced to 50% of the basic pay.

6. Upon hearing and on perusal of the material on record, I find that O.M. of 26th November, 2008 (*Annexure P-2*) permits the concerned Public Sector Enterprise to enhance the maximum ceiling of 40% of the basis pay to 50%, but it is left to the concerned Public Sector Enterprise to put up its respective proposal for enhancement of the maximum ceiling to the concerned Ministry/Department for approval. In the counter-affidavit filed by respondent, it is asserted that 5% extra towards handicap allowance beyond 40% is not allowed. Pertinently, it is not disclosed in the counter-affidavit filed if proposal to enhance the maximum ceiling of 40% of the basic pay towards allowance, etc., has been put up by respondent for approval to the concerned Ministry. It is no doubt true that petitioner has already opted to restrict the allowances to 40% of the basic pay, but that by itself does not disentitle petitioner to claim 5% additional transport subsidy, as he is a differently-abled person. It is relevant to note that petitioner's Representation of 23rd January, 2012 (*Annexure P-4*) seeking payment of 5% additional transport subsidy has not been dealt with by respondent.

7. The counter-affidavit filed does not disclose as to whether any order on petitioner's Representation has been passed. Since counter-affidavit filed does not disclose as to why the maximum ceiling of allowances from 40% of the basic pay cannot be enhanced to 50%, therefore, it is deemed appropriate to dispose of this petition with direction to respondent to pass a speaking order on petitioner's Representation (*Annexure P-4*) within twelve weeks from today and convey its fate to petitioner within a week thereafter, so that petitioner may avail of remedies as available in law, if need be.

8. With aforesaid directions, this petition is disposed of.

(SUNIL GAUR)
JUDGE

JANUARY 19, 2018

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