

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

% **Date of decision: 11th May, 2021.**

+ **W.P.(C) 5259/2021 & CM 16173/2021(for stay).**

SHANTI SWAROOP & ANR.

..... Petitioners

Through: Ms. Nandini Sharma, Adv.

versus

SECRETARY MINISTRY OF FINANCE & ORS.. Respondents

Through: Mr. Ravi Prakash, CGSC with Mr. Shahanullah and Mr. Gurtejpal Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

AMIT BANSAL, J.

CM 16174/2021(for exemption).

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

W.P.(C) 5259/2021 & CM 16173/2021(for stay).

3. The present petition impugns the order dated 2nd February, 2021 passed by Central Administrative Tribunal (CAT), Principal Bench, New Delhi dismissing a batch of OAs whereby the claim of the petitioners in respect of granting special dispensation for payment of Transport Allowance (TA) for employees posted at offices located at Faridabad, Ghaziabad, Gurgaon and Noida (satellite towns), at the same rates as Central Government employees posted in Delhi, was rejected.
4. The applicants in various OAs before CAT were posted at Central

Government offices located at Faridabad, Ghaziabad, Gurgaon and Noida. The case of the applicants before CAT was that earlier they were getting TA in respect of all the places referred to above, at par with rates applicable to Central Government employees working in offices within Delhi. Consequent to the recommendations of the VI Central Pay Commission (CPC), this position was changed and the employees working in the aforesaid satellite towns started getting lesser amount of TA as compared to employees in Delhi.

5. This was challenged by several affected employees, including the Petitioners, by filing batch of OAs before CAT. CAT, vide its earlier order dated 4th October, 2013 in the said Oas, remanded the matter to the Ministry of Finance to re-examine the case. Upon re-examination, the respondents issued OM dated 7th March, 2014 rejecting the claim of the petitioners in light of OM dated 29th August 2008, whereby employees posted in Faridabad, Ghaziabad, Gurgaon and Noida were to be granted TA at the rate specified for the category of “Other Places”, which was lower than the rates for A-1/A class cities, that included Delhi. The rejection was once again challenged by way of batch of Oas before CAT and CAT passed an order dated 18th March, 2015 once again directing the respondents to re-examine the matter in its entirety. The matter was re-examined once again by the respondents and the claim of the petitioners was rejected vide OM dated 26th October, 2015, resulting in filing of the present batch of Oas, from which the present petition arises.

6. Vide the impugned order, CAT dismissed the batch of OAs, reasoning/observing that (i) undoubtedly, earlier employees working in Central Government offices in Faridabad etc. Were extended the benefit of

TA on par with their counter parts in Delhi, however, at that point of time there was no specific rule or OM in this behalf; (ii) the VI CPC addressed the issue of TA pointedly and recommended classification of cities into different categories and once a city or town was classified, it was not possible to expand or add areas on the ground of contiguity or otherwise; (iii) therefore, comparison with neighbouring towns or cities was not permissible; (iv) in the earlier two rounds of litigation before CAT, CAT set aside the orders passed by the respondent no.1 mainly on the ground that the Ministry did not bestow its attention to certain aspects, however, attention of CAT in the earlier rounds, was not drawn to the classification of cities that happened upon the recommendation of the VI CPC and the fact that fixation of TA was a sequel to that; (v) the petitioners could not point out any specific provision of law that had been violated; just as the pay structure of an employee is not static and keeps on undergoing changes with the passage of time, so is the case with TA; (vi) the petitioners, who got benefit of substantial pay revision on the basis of recommendation of the VI CPC cannot selectively separate the component of TA and claim it on the basis of pre-existing rules; (vii) there existed a facility of Anomalies Committee under the VI CPC and the petitioners did not take any steps to point out any anomaly; and (viii) the Tribunal cannot substitute its view with that taken by the Government and successive pay commissions. Accordingly, CAT was of the view that no ground for interference was made out and therefore the batch of Oas was dismissed.

7. Aggrieved by the said impugned order, the petitioners have challenged the same before this Court by way of the present petition. Counsel for the Respondent appears on advance notice and considering the

nature of controversy, we have decided to hear the matter finally. The only ground urged on behalf of the counsel for the petitioners is that CAT, while passing the impugned order, has not taken into account the orders passed by CAT itself in earlier rounds of litigation in favour of the employees. On the other hand, the counsel for the respondents has relied upon the findings given in the impugned order passed by CAT.

8. The issue to be considered is whether the TA payable to the petitioners, who are admittedly posted at various locations in NCR outside Delhi viz. Faridabad, Ghaziabad, Gurgaon and Noida, should be at par with the TA payable to Central Government employees posted in Delhi. Undoubtedly, before the recommendation of the VI CPC came into effect, employees posted at these satellite towns of Delhi were paid TA at par with employees posted at Delhi. However, the VI CPC has made a distinction between different cities and has categorised the same. The employees posted at Delhi are being given TA at rates applicable to A/A1 cities, the employees posted at satellite towns of Delhi are being paid TA at rates applicable to "Other Places". Based on recommendations of the VI CPC, respondents have brought about this classification between different cities and no ground has been made out to challenge the said classification. Central Pay Commissions are expert bodies that are appointed to study in detail the pay structure of the Central Government employees and make recommendations. Once the report of pay commission is accepted by the Central Government, there is very little of scope of interference by the courts/tribunals. CAT, in the impugned order, has rightly held that this aspect was not brought out in the earlier rounds of litigation before CAT. Further, CAT has correctly observed that the petitioners cannot selectively

choose the recommendations of VI CPC, accept the beneficial provisions and reject the non beneficial ones.

9. There is no infirmity with the decision of CAT calling for interference by this Court. We find no merit in the present petition and the same is dismissed.

AMIT BANSAL, J

RAJIV SAHAI ENDLAW, J

MAY 11, 2021

‘pp’

नित्यमेव जयते