

SUPREME COURT OF INDIA

Deaf Employees Welfare Association

Vs.

Union of India

W.P.(Civil.)No.107 of 2011

(K.S. Radhakrishnan and A.K. Sikri, JJ.)

12.12.2013

JUDGMENT

K. S. Radhakrishnan, J.

1. This Writ Petition has been preferred by two Associations representing the Deaf and Dumb persons seeking a Writ of Mandamus directing the Central and State Governments to grant transport allowance to its government employees suffering from hearing impairment in equal with that is being given to blinds and orthopedically handicapped government employees and also for further consequential reliefs.

2. The Ministry of Finance, Government of India vide its Office Memorandum (for short 'OM') dated 31.8.1978 permitted conveyance allowance to the employees of the Central Government borne or regular establishment who are disabled, namely blind and orthopedically handicapped, with disability of lower extremities. The Government of India, later, vide its OM of Ministry of Finance, Department of Expenditure dated 16.4.1987, consequent upon the introduction of C.C.S. (Revised Pay) Rules, 1986, revised the rate of Conveyance allowance to disabled persons, namely blind and orthopedically handicapped to 5% of the basic pay, subject to a maximum of Rs.100/- per month.

3. The Ministry of Finance, Government of India vide its OM dated 3.10.1997, in accordance with the recommendations of the 5th Central Pay Commission abolished the Conveyance Allowance granted vide OM dated 31.8.1978 and, instead, replaced it by transport allowance to be paid to blind and orthopedically handicapped employees at double the normal rates prescribed under the said OM dated 3.10.1997.

4. The Deaf and Dumb Association submitted several representations after coming into force the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'The Disabilities Act') for extending the benefits of transport allowance to them also. Their representation was considered by the Ministry of Health and Family Welfare, Department of Health and they issued an OM dated 12.5.2003, which reads as follows:

" Office Memorandum

Subject: Grant of Conveyance Allowance to Blind and Orthopaedically Handicapped Central Government employees – regarding.

The undersigned is directed to refer to Ministry of Finance UO No. 21(1)/97-E.II(B) dated 17th July 2002 on the subject mentioned above and to state that the matter was examined in consultation with the subject experts and the Ministry of Social Justice and Empowerment. While the technical experts believed that the deaf and dumb generally do not require physical assistance for commuting to and fro from their place of residence to their place of duty, the Ministry of Social Justice and Empowerment strongly favoured the grant of conveyance allowance to deaf and dumb employees of the Central Government. In the final view, it is recommended that it would not be just and fair to equate the disability of deaf and dumb persons with those of blind persons in so far as transport allowance/facility is concerned.

Sd/-

Deputy Secretary to the Government of India"

5. The Ministry of Road Transport and Highways also sent a proposal to the Ministry of Finance to grant transport allowance at enhanced rates for hearing handicapped persons at par with the blind persons. Ministry of Road Transport and Highways also held a meeting on 2.3.2006 for examining the case for grant of conveyance allowance to the deaf and dumb employees of the Central Government and recommended for grant of conveyance allowance to them as well. The request was considered by the Ministry of Finance, Department of Expenditure and, vide OM dated 26.6.2006, it directed the Ministry of Finance to clarify the contradictory stand earlier taken and requested them to forward their final view. The Ministry of Health and Family Welfare again examined the issue and recommended for transport allowance at enhanced rates for Hearing Handicapped persons on a par with the blind persons. The OM dated 26.6.2006 reads as follows:

" Office Memorandum

Subject: Grant of Transport Allowance at enhanced rate for Hearing Handicapped

persons at par with blind persons.

The undersigned is directed to refer to Ministry of Finance OM No. 21(1)/97-E.II(B) dated 13th June 2006 on the subject mentioned above and to state that the matter was got re-examined by the Ministry by a committee of specialists in the area, which recommended the grant of special transport allowance at enhanced rate to hearing impaired personnel in view of the following reasons:-

(1) The disability conditions brought about by nature are the same for all disabled. Society and the people have to appreciate it and support them.

(2) For any transportation system audio based signaling system would always be different for hearing impaired. They require special assistance.

The Ministry of Health & Family Welfare, therefore, recommend grant of special transport allowance at enhanced rate for Hearing Handicapped.

The proposal has been seen & approved by Secretary (H&FW).

Sd/-

Under Secretary to the Government of India"

6. The Ministry of Finance, however, vide its OM dated 30.11.2006 advised the Ministry of Health and Family Welfare to refer the issue to the 6th Central Pay Commission for getting their recommendation. The Ministry of Health and Family Welfare, however, did not take up the matter with the 6th Central Pay Commission. The 6th Central Pay Commission recommended that physically disabled employees shall continue to draw the allowance at double the normal rates. Following that, Ministry of Finance issued an OM dated 29.8.2008 stipulating that the blind or orthopedically handicapped employees, in terms of Ministry of Finance's order vide OM dated 3.10.1997, shall continue to draw the allowance at double the normal rates. The Ministry of Social Justice and Empowerment again approached the Ministry of Finance in February 2013 requesting to consider the issue of grant of double transport allowance to hearing handicapped employees. OM dated 22.3.2013 issued by the Ministry of Health and Family Welfare reads as follows:

“Office Memorandum

Subject: Request to sanction the transport allowance at double rates to Deaf Central Government Employees in various Central Government Offices - reg.

1. The undersigned is directed to say that a representation has been received from Shri S. Murugan, General Secretary, All India Central Government Deaf Employees Association, Secundrabad (A0) (copy enclosed) regarding revision of transport allowance at double rate to deaf employees working under the Central Government Offices/workshops.

2. The matter was considered in this Ministry and recommended that as the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, lists 'hearing impairment' as disability, therefore, all officials who are deaf/hearing impairment with hearing loss of 60 decibels or more in the better ear, working under Central Government Offices may also be made eligible for transport allowance at double the normal rate as has been given to loco-motor disabled and visual disabled (Blind) employees.

3. Accordingly, it is requested to issue specific instructions to include hearing impaired employees for extending of transport allowance at double rate as covered under the provisions of para 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

This issue with the approval of Secretary (H&FW).

Sd/-

Under Secretary to the Government of India."

7. The Ministry of Finance again considered the request of the Ministry of Health and Family Welfare on 2.7.2013 and did not take any action, but sought for clarification by the Ministry of Health and Family Welfare. The Ministry of Health and Family Welfare then issued an OM dated 27.9.2013 and again recommended for the transport allowance at double the normal rates as is being given to the loco-motor disabled and visually disabled (Blind) employees on the following grounds:

(i) The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, lists "hearing impairment" (loss of 60 decibels or more in the better ear in the conversational range of frequencies) as disability.

(ii) Travelling risk for deaf/hearing impaired employees is as much as with other disability.

(iii) Hearing impaired persons cannot communicate to bus conductors, auto and taxi drivers as a normal person can do.

(iv) Time and effort required to reach destination is considerably more as compared to normal persons.

(v) Hearing impaired persons end up spending more money in travelling as compared to normal persons.

8. We notice that, in spite of the recommendation made by the Ministry of Health and Family Welfare, Ministry of Finance, Department of Expenditure stuck to their earlier stand and pointed out that since the Government has already constituted 7th Central Pay

Commission, it would be appropriate that the said Pay Commission would examine the claim made by the Deaf and Dumb persons and, hence, this writ petition.

9. Pleas made by the deaf and dumb persons, it may be noticed, fell into deaf ears in all these years, while their claim has to be considered in a dispassionate manner with a human touch, especially in the wake of the Disabilities Act and on the basis of the various international Conventions, to which India is a party. The Economic and Social Commission for Asia and the Pacific (ESCAP) in a meeting in December 1992 in Beijing, declared the period 1993-2000 as the Asian and Pacific Decade of Disabled Persons. Even before that, it is pertinent to note, that Ministry of Finance, Government of India had, vide its order dated 31.8.1978, accorded its sanction for granting conveyance allowance to employees of the Central Government borne on regular establishment who were disabled, namely blind and orthopedically handicapped persons. India is a signatory to the above mentioned Convention. Being a signatory to that Convention, it was obligatory on the part of India to enact a suitable legislation to give effect to the Convention. Accordingly, the Disabilities Act, 1995 was enacted.

10. We may, in this regard, refer to the "UN Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities", 2008. India is a signatory to that Convention as well. Article 2 of the Convention reads as follows:

"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms."

11. We have already indicated that India is a signatory to both the Conventions, i.e. the Beijing Convention, 1992 and UN Convention, 2008. We have to understand the scope of the Disabilities Act in the light of the above mentioned Conventions.

12. The Disabilities Act does not create any barrier or discrimination among persons with disabilities. Sections 2(i) and (l) of the Disabilities Act defines the expressions 'disability' and 'hearing impairment' respectively, which read as follows:

"2(i). "Disability" means-

- (i) Blindness;
- (ii) Low vision;
- (iii) Leprosy-cured;
- (iv) Hearing impairment;
- (v) Loco motor disability;
- (vi) Mental retardation;
- (vii) Mental illness.

2(l). "Hearing impairment" means loss of sixty decibels or more in the better ear in the conversational range of frequencies."

Section 2(o) defines "locomotor disability" which reads as follows:

"(o) "locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy."

Section 2(b) defines the expression "blindness" as follows:

"(b) "blindness" refers to a condition where a person suffers from any of the following conditions, namely:-

- (i) Total absence of sight; or
- (ii) Visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or
- (iii) Limitation of the field of vision subtending an angle of 20 degree or worse."

Section 2(t) of the Act defines 'person with disability", which reads as follows:

"(t) "Person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority."

13. Chapter V of the Act provides for the appropriate Governments and local authorities

to provide children with disabilities free education, makes schemes and programmes for non-formal education etc. Chapter VII of the Act deals with the reservation of posts for the "persons with disabilities". Section 32 of the Act states that the appropriate Government shall identify posts in the establishments which can be reserved for the persons with disabilities and also periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology. Section 33 of the Act deals with the 'Reservation of Posts'. Section 38 of the Act provides that the appropriate Government and local authorities shall, by notification, formulate schemes for ensuring employment of persons with disabilities. Section 39 provides for all government educational institutions to reserve seats for persons with disabilities.

14. Chapter VII deals with "Affirmative Action". Section 42 of the Act says that the appropriate Governments shall, by notification, make schemes to provide aids and appliances to persons with disabilities. Section 43 deals with the "Schemes for preferential allotment of land for certain purposes" and reads as follows:

"43. Schemes for preferential allotment of land for certain purposes.- The appropriate Governments and local authorities shall by notification frame schemes in favour of persons with disabilities, for the preferential allotment of land at concessional rates of-

- (a) House;
- (b) Setting up business;
- (c) Setting up of special recreation centres;
- (d) Establishment of special schools;
- (e) Establishment of research centre's;
- (f) Establishment of factories by entrepreneurs with disabilities."

15. Chapter VIII of the Disabilities Act deals with "Non-Discrimination". Section 44 of the Act deals with the 'Non-discrimination in transport', which reads as follows:

"44. Non-discrimination in transport.-

Establishments in the transport sector shall, within the limits of their economic capacity and development for the benefit of persons with disabilities, take special measures to –

- (a) Adapt rail compartments, buses, vessels and aircrafts in such a way as to permit easy access to such persons;
- (b) Adapt toilets in rail compartments, vessels, aircrafts and waiting rooms in such

a way as to permit the wheel chair users to use them conveniently."

16. Sections 45, 46 and 47 of the Disabilities Act are also relevant, which reads as follows:

"45. Non-discrimination on the road.- The appropriate Governments and the local authorities shall, within the limits of their economic capacity and development, provide for –

- (a) Installation of auditory signals at red lights in the public roads for the benefit of persons with visually handicap;
- (b) Causing curb cuts and slopes to be made in pavements for an easy access of wheel chair users;
- (c) Engraving on the surface of the zebra crossing for the blind or for persons with low vision;
- (d) Engraving on the edge of railway platforms for the blinds or for persons with low vision;
- (e) Devising appropriate symbols of disability;
- (f) Warning signals at appropriate places.

46. Non-discrimination in the built environment.- The appropriate Governments and the local authorities shall, within the limits of their economic capacity and development, provide for-

- (a) Ramps in public buildings;
- (b) Adaptation of toilets for wheel chair users;
- (c) Braille symbols and auditory signals in elevators or lifts;
- (d) Ramps in hospitals, primary health centre's and other medical care and rehabilitation institutions.

47. Non-discrimination in government employment.—(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

17. Chapter XIII deals with "Social Security". Section 68 deals with the 'Unemployment allowance', which reads as under:

"68. Unemployment allowance.- The appropriate Governments shall within the limits of their economic capacity and development shall by notification frame a scheme for payment of an unemployment allowance to persons with disabilities registered with the Special Employment Exchange for more than two years and who could not be placed in any gainful occupation."

18. The Disabilities Act, as already indicated, states that the "persons with disabilities" means persons suffering from not less than 40% of "any disability", as certified by the medical doctor. When a person is having any of the disabilities mentioned in Section 2(i) and is so certified by the Medical Doctor, he is entitled to the benefits of all the Schemes and benefits provided by the Government and there can be no further discrimination among the persons with varied or different types of disabilities. In the matter of affirmative action, in our view, there cannot be further discrimination between a person with disability of 'blindness' and a person with disability of 'hearing impairment'. Such discrimination has not been envisaged under the Disabilities Act. All the categories of persons mentioned in Section 2(i) have their own disadvantages, peculiar to themselves. A 'visually impaired person' cannot be equated with 'hearing impaired person' and vice versa. Both have different type and mode of disability. For a blind person, visibility may be poor, sometimes zero per cent, but would be able to hear and understand what is going on in and around him. At the same time, a deaf and dumb person could see, but would not be able to talk and hear what is going on around him. The nature of disability of those categories of persons may not be same, but the disabilities they suffer are to be addressed with care and compassion.

19. Ministry of Finance, Government of India, took the view that a visually impaired person cannot be equated with hearing impaired person since persons who are deaf and dumb are not physically dependent on others for commuting from one place to another, hence they are not entitled to double rate of transport allowance. The view expressed by the Ministry of Finance, in spite of the recommendations made by the Ministry of Health

and Family Welfare, for not providing transport allowance to its Government employees suffering from hearing impairment, cannot be sustained. We are of the view that the travel undertaken by the deaf and hearing impaired employees is equally arduous and burdensome as compared to persons having other disabilities referred to in Section 2(i) of the Act. Hearing impaired persons cannot communicate with the bus conductors, auto and taxi drivers as a normal person can do. Invariably, they have to seek the assistance of a stranger. Time and effort required to reach a destination is considerably more as compared to normal persons. A hearing impaired person sometimes may end up spending more money in travelling as compared to normal persons. At times, he is required to seek assistance of strangers or other travelers.

20. The hearing impaired person also would not be able to hear the sound of horn and passing vehicles and, at times, will have to seek the assistance of other co-passengers or strangers on the road. We find it difficult to subscribe the view that disability, as envisaged under Section 2(a) of the Act, with respect to the hearing impaired persons, is less than the disability of a blind person. No such discrimination has ever been made or visualized among the persons with disabilities mentioned in Section 2(i) of the Act as they form a class by themselves. A further discrimination amongst themselves is clearly violative of Article 14 of the Constitution of India.

21. The Disabilities Act deals with a well defined class i.e. "persons with disabilities" mentioned in Section 2(i). The nature of disability may differ from person to person included in Section 2(i), but all such persons have been categorized as a group of "persons with disabilities" under Section 2(i) read with Section 2(t) of the Act. In our view, the differentia sought to be canvassed by the Ministry of Finance has no rational relation to the object sought to be achieved by the Disabilities Act, which envisages to give equal opportunities, protection and rights to the "persons with disabilities". Equality of law and equal protection of law be afforded to all the "persons with disabilities" while participating in Governmental functions. Transport allowance is given to Government employees since many of the Government employees may not be residing in and around their places of work. Sometimes, they have to commute long distances to and fro. There has been an unprecedented increase in the commutation time between the residence and place of work which effects the work environment in offices adversely as the employee spend much of their energy in commuting and, in the case of persons with disabilities, the situation is more grave.

21-A. State Commission for Persons with Disabilities, Kerala vide its letter dated 21.3.2003, evidently, taking note of those aspects, requested the Government of Kerala to extend the benefit of conveyance allowance to deaf and dumb employees also and pursuant to the same, the Government of Kerala vide G.O.(P) No.277/2005/Fin. Of Finance Department dated 14.6.2005 extended the benefit of conveyance allowance sanctioned as per the Government Orders to the Government employees with hearing impaired as per the disability defined in the Disabilities Act. The State of Andhra Pradesh, on the recommendations of the Anomalies Committee issued Orders No.22, Finance (TA)

Department dated 17.12.2004 on the recommendation of One Man Committee in 2006, vide G.O. MS. No.197 dated 6.7.2006 of Finance (TA) Department extended the benefit of Conveyance Allowance to deaf and dumb employees on par with physically handicapped employees.

22. The deaf and dumb persons have an inherent dignity and the right to have their dignity respected and protected is the obligation on the State. Human dignity of a deaf and dumb person is harmed when he is being marginalized, ignored or devalued on the ground that the disability that he suffers is less than a visually impaired person which, in our view, clearly violates Article 21 of the Constitution of India. Comparison of disabilities among "persons of disabilities", without any rational basis, is clearly violative of Articles 14 of the Constitution of India. In our view, the recommendation made by the Ministry of Health and Family Welfare for extending the benefit of transport allowance to the Government employees suffering from hearing impairment in equal with blinds and orthopaedically handicapped Government employees is perfectly legal and is in consonance with Articles 14 and 21 of the Constitution of India.

23. Under such circumstances, we are inclined to allow this writ petition and direct the Respondents to grant transport allowance to deaf and dumb persons also on par with blinds and orthopedically handicapped employees of Central and the State Governments and other establishments wherever such benefits have been extended to the blinds and orthopedically handicapped employees. Ordered accordingly.