(2011) 04 DEL CK 0005

In the Delhi High Court

Case No : Writ Petition (C) No. 6529 of 2007

Laxmikant Vijayvargia APPELLANT

Vs

Bharat Heavy Electricals Limited and Others RESPONDENT

Date of Decision : 04-04-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 04 DEL CK 0005

Hon'ble Judges : Dipak Misra, C.J;Sanjiv Khanna, J

Bench : Division Bench

Advocate : Ranjan Mani, for the Appellant; A.K. Roy, for R-1, B.V. Niren, CGSC for R-2 and 4, for the Respondent

Judgement

Dipak Misra, C.J.—The Petitioner, an orthopedically handicapped person with 50% disability of lower limbs, who is an employee of Bharat Heavy Electricals Limited (BHEL), the Respondent No. 1 herein, has prayed to command the employer to pay transport allowance as per the Government of India, Ministry of Finance order dated 3.10.1997. Quite apart from the said prayer, a relief is also sought to direct the Union of India, Ministry of Heavy Industries and Public Enterprises to amend its order dated 5.9.2003 so that the provisions regarding transport allowance payable to eligible disabled employees governed by Government of India, Ministry of Finance Order No. 21(1)/97/E.II (B) of 3.10.1997, as amended, are extended with no additional restrictions to the eligible disabled persons of Public Sector Undertakings including the first Respondent with retrospective effect from 1.8.1997; and further to command the employer to increase the reimbursement of conveyance expenditure payable to Petitioner and other eligible disabled employees to twice the normal limits specified in the Rules under Respondent No. 1''s scheme for the eligible employees for owning and maintaining a vehicle for official duties and to extend the said benefit with retrospective effect from the date of joining of the disabled employee or from the date of inception of the said scheme.

2. As set forth in the petition, the Petitioner joined the Respondent company in May, 2002 and has been posted at the Company''s unit at Bhopal. The said unit employs more than 70 disabled persons in posts ranging from Peon to Additional General Manager.

3. The second Respondent is in-charge of formulation of policy guidelines pertaining to Public Sector Enterprises and also, issuing of the guidelines to Public Sector Enterprises. The enactment, namely, Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 (for brevity, "the 1995 Act") came into force on 1.1.1996 guaranteeing equal opportunities in employment for persons with disabilities and also special schemes by the appropriate Governments to ensure employment of persons with disabilities. The Respondent No. 4, Ministry of Finance, Department of Expenditure issued an order dated 3.10.1997, Annexure P1, which prescribes grant of transport allowance for Central Government employees to compensate them for the cost incurred on account of commuting between the place of residence and place of duty and further stipulates that Central Government employees who are blind or orthopaedically handicapped with disability of the lower limbs are to be paid Transport Allowance double the normal rates prescribed therein.

4. By virtue of the order, the conveyance allowance provided for disabled persons in the earlier Government of India, Ministry of Finance circulars, Annexure P2, stood abolished. The order of 3.10.1997 makes the provisions for disabled persons applicable only to persons who are blind or orthopaedically handicapped with disability of the lower limbs, but the persons who have hearing impairment or the persons who are orthopaedically handicapped with disability of upper extremities and persons with low vision are excluded from the said provisions. The said exclusion is discriminatory and all persons with disabilities are to be included. It is averred that vide O.M. No. 2(42)/97-DPE(WC) dated 4.3.1998, the Respondent No. 2 extended the provisions regarding Transport Allowance in Government of India, Ministry of Finance order of 3.10.1997 to the employees of Public Enterprises following the Central Dearness Allowance (CDA) pay scale pattern effective from 1.8.1997. The said order has been brought on record as Annexure P3.

5. It is put forth that though the Petitioner is orthopaedically handicapped person with 50% disability of the lower limbs, as is reflectible from the certificate contained in Annexure P5, yet he was not paid the Transport Allowance for commuting between the residence and place of work but was paid Rs. 100/- per month towards Conveyance Allowance according to Rules framed by the Respondent No. 1. The reimbursement of conveyance expenditure was paid to the Petitioner for ownership and maintenance of a vehicle for official duties separately by the Respondent No. 1. The Petitioner made several representations during the year 2002-03 to the employer to pay him Transport Allowance in accordance with Government of India, Ministry of Finance order dated 3.10.1997

but the said representations have fallen on deaf ears.

6. It is the case of the Petitioner that vide order No. 6(7)/2002-DPE(SC/ST Cell) dated 5.9.2003, the DPE directed that the provisions regarding Transport Allowance payable to disabled employees in Government of India as per order dated 3.10.1997 be extended with some restrictions to disabled employees of the Public Sector Undertakings following the Industrial Dearness Allowance (IDA) pay scale pattern. It is urged that the DPE ought to have directed that the above mentioned provisions pertaining to payment of Transport Allowance should be extended to eligible disabled employees of Public Sector Enterprises following the IDA pay scale pattern with retrospective effect from 1.8.1997 but, unfortunately, the same was made effective from 5.9.2003 as a consequence of which there has been unfair discrimination against the Petitioner and similarly eligible employees of PS Es following the Industrial Dearness Allowance (IDA) pay scale pattern which violates Article 14 of the Constitution of India.

7. As per the case of the Petitioner, the said DPE order of 5.9.2003 contains a restriction on the payment of Transport Allowance which is not present in the Government of India, Ministry of Finance order dated 3.10.1997. As the DPE restriction provides the Transport Allowance payable to the eligible disabled employees of PS Es following IDA pay scale pattern to be limited within the perquisites/allowances ceiling of the 50% of the basic pay, the same is arbitrary and discriminates against the Petitioner and similarly placed disabled employees of PS Es following the IDA pay scale pattern. The Transport Allowance payable to the eligible disabled employees is a special allowance to assist them with the hardship and expense of commuting between their place of residence and the work place stands on a separate footing from other perquisites and allowances paid to the employees of the Central Government and PS Es, whereas such a distinction is not manifest in the order dated 3.10.1997.

8. It is contended that the Petitioner is entitled to be paid Transport Allowance of Rs. 800/- per month whereas he is being paid Rs. 100/- per month as Conveyance Allowance since the date of his joining and the said amount has been increased to Rs. 200/- per month w.e.f. 1.9.2006 after passing of the order of the Chief Commissioner for Persons with Disabilities on 28.5.2006. As urged, in para 3(vi) of the order dated 3.10.1997 there is stipulation that such handicapped employees who have been provided with the Government accommodation within a distance of one kilometer from the place of work or within a campus, housing the place of work and residence, the allowance shall be admissible at normal rates as applicable under these orders. But the said condition is being illegally applied to the case of the Petitioner. It is averred that when the Petitioner joined Bharat Heavy Electricals Limited at Bhopal, he was provided accommodation in the BHEL Township at Bhopal which is spread over 166.9. Kms asphalted roads and 12.9. km dual carriage roads. The distance between the residence and place of work of the Petitioner was in excess of 2 km. With effect from 20.6.2005, he has obtained a private accommodation which is

more than one kilometer from his place of work.

9. As the amount in question was not paid, the Petitioner filed a complaint to the Chief Commissioner for Persons with Disabilities, on 28.11.2004 which was disposed of by the Chief Commissioner vide order dated 26.5.2006 whereby the same was extended to Rs. 200/- though the Petitioner is entitled to get Rs. 2450/- per month regard being had to the Petitioner''s current post. It is asserted that the order of the Commissioner is unjustified and illegal and, therefore, deserves to be quashed because the Chief Commissioner has committed illegality and failed to protect the rights of the Petitioner.

10. A counter affidavit has been filed by the Respondent No. 1 contending, inter alia, that the Petitioner in praesenti is availing the benefit directed by the Chief Commissioner for Persons with Disabilities vide decisions dated 26.5.2006 and 10.11.2006 and has preferred this petition to have the double benefit which is not in consonance with either the scheme of the Respondent company or the Office Memorandum issued by the Department of Expenditure, Ministry of Finance and the Department of Public Enterprises. It is put forth that the scheme of the Respondent company is a beneficial one and in the interest of the Petitioner as well as the other employees of the Respondent organization covered under the IDA pattern, as they have a separate scheme for transport allowance. It is asseverated that the nomenclature "conveyance allowance" or "transport allowance" intends to qualify the same purpose and cannot be claimed twice under both the heads. The Petitioner is already getting a sum of Rs. 2450/- plus Rs. 200/- per month on account of conveyance reimbursement as against a comparable employee of the Government who is entitled to only Rs. 800/- per month under the head of "Transport Allowance". The Petitioner, in addition to this, is entitled to reimbursement of a month''s conveyance allowance, i.e. Rs. 2450/- annually on account of maintenance. The Office Memorandum dated 3.10.1997 provided for payment of transport allowance to blind and orthopaedically challenged at double the normal rate as applicable to Central Government employees. A tabular chart has been given in the counter affidavit. It is as follows:

Pay Scale of the Employees Rate of Transport Allowance per month (in rupees) "A-1" / "A" Other Places Class City

1. Employees drawing pay in the scale of Rs. 8000-13500 or above 800 400

2. Employees drawing pay in the scale of Rs. 6500-6900 or above but below the scale of Rs. 8000-13500 400 200

3. Employees drawing pay below the scale of Rs. 6500-6900 100 75

11. It is the stand of the Respondent No. 1 that reimbursement of conveyance expenditure to the employees as well as grant of conveyance allowance to blind and orthopaedically handicapped employees is governed as per the company''s policy / rules which is different and distinct from the Government Rules.

Thereafter, it has been urged that the company''s policy/rules with regard to payment of allowances and other benefits towards conveyance to employees including the physically challenged employees are that all executives who are in possession of a car are eligible to claim reimbursement and the rates for reimbursement are indicated in the Scheme; that grant of conveyance to blind and orthopaedically handicapped employees has been described in the chapter "other allowances" u/s "Pay & Allowances of the Personnel Manual of Respondent No. 1"; that such of the employees who are blind or orthopaedically handicapped with disabilities of lower extremities and generally require physical assistance for going to and coming from the place of their duty are entitled to a special conveyance allowance @ 5% of basic pay subject to a maximum of Rs. 200/- per month over and above the conveyance reimbursement facility admissible under the company''s rule w.e.f 15.5.1997, on fulfillment of certain conditions indicated in the scheme. The Petitioner, who is physically challenged, is entitled for payment of special conveyance allowance of Rs. 200/- per month over and above Rs. 2450/- which he is entitled under the scheme. Over and above the aforesaid facilities, in terms of the company''s policy, all employees including physically handicapped are eligible for reimbursement of cost of spares and the amount spent on repairs of the vehicle by the employees. As per the said scheme, the amount of reimbursement is limited to one month''s rate of conveyance reimbursement once in a financial year on the basis of a certificate submitted by the employee. The Petitioner is entitled for one month''s conveyance reimbursement of Rs. 2450/- under this scheme once in a financial year.

12. It is asserted that the Petitioner is eligible to get conveyance reimbursement under the BHEL scheme at the rate which is much more than the amount paid by Government as Transport Allowance to its employees. The rate of reimbursement to Government employees at Bhopal for an executive at the level of Petitioner would be Rs. 400/- per month and for a physically challenged employee, it would be Rs. 800/- per month. As against this, as per BHEL''s scheme, the Petitioner is entitled for an amount of Rs. 2450/- plus Rs. 200/- per month. The Petitioner is also entitled for reimbursement of cost of spares once in a year and thus, in all, he gets Rs. 2650/- per month. Thus, the Petitioner is getting a benefit which is much above the benefit admissible to Government employees. The scheme of conveyance reimbursement of the company is reviewed and revised from time to time and its revision is not linked to the pay revision as was done in the case of Central Government. Thus, no comparison can be made in the case of Petitioner and the physically challenged employees of Central Government in terms of the amount of Transport Allowance being paid to them. Both the cases are different and distinct from each other. The Office Memorandum dated 3.10.1997 providing for payment of Transport Allowance to blind and orthopaedically challenged at double the normal rate prescribed in that circular, was applicable to Central Government employees in the context of their revised entitlement of Transport Allowance rates as given in the Table above, which were flat rates based on the recommendations of the 5th Central Pay Commission.

13. It is averred that the instructions of the Ministry of Finance in the matter of payment of conveyance allowance to physically challenged persons was extended by DPE in respect of employees of CPS Es following Central IDA pattern. With regard to CPS Es employees with IDA pattern, there is no uniformity/parity as far as payment of perquisites including Transport Allowance CPS Es following the IDA pattern have evolved their own transport policy based on their paying capacity. As a result, some of the profit making CPS Es are paying transport allowance/ conveyance reimbursement at various rates, whereas some loss making CPS Es have not extended this benefit to their employees by paying less than the prescribed rates of DPE.

14. In the counter affidavit, the order passed on 26.5.2006 is supported on the foundation that a finding has been returned that the Respondent No. 1 has appropriately increased the transport/conveyance allowance payable to all eligible physically challenged employees including the Petitioner from Rs. 100/- to Rs. 200/- per month with effect from 1.9.2006 which is in addition to Rs. 2450/- per month being paid to them. It is further clarified that a Government employee under the IDA pattern has a cap of Rs. 800/- per month whereas the Petitioner is already getting an amount of Rs. 2650/- per month which in any case is more than three times the ceiling limit provided to the Government employees or to other employees covered under the IDA pattern under the Office Memorandum issued by the Department of Public Enterprises and when there is a higher payment, the question of setting aside the order of the Commissioner does not arise or the erroneous application of the Office Memorandum does not merit consideration.

15. A rejoinder affidavit has been filed by the Petitioner stating, inter alia, that the Office Memorandum dated 3.10.1997 prescribes the Transport Allowance of Rs. 800/- per month as compensation for commuting between the place of residence and the place of duty but the Respondent company is paying only Rs. 200/- per month. The Respondent No. 1 is paying the Petitioner Rs. 2450/- per month under its scheme for reimbursement of conveyance expenditure for ownership and maintenance of personal vehicle for official duties. The stand in the counter affidavit that the Petitioner is getting the double benefit or is getting more than three times the ceiling limit provided to the Government employees or to other employees covered under the IDA pattern is misconceived as the Respondent No. 1 deliberately mis-interpreted the scheme for Transport Allowance in Office Memorandum dated 3.10.1997 and the Respondent No. 1''s scheme for reimbursement of conveyance expenditure, as both are completely different. Under the Office Memorandum dated 3.10.1997, it is clearly stipulated that the 5th Central Pay Commission has recommended the grant of Transport Allowance to Central Government employees to suitably compensate them for the cost incurred on account of commuting between the place of residence and the place of duty. The said Office Memorandum has been extended to Public Sector Enterprises vide Office Memorandum dated 5.9.2003. The scheme for reimbursement provides for reimbursement of conveyance expenditure with a

view to encourage the executives to own and maintain conveyance and use such conveyance on journeys undertaken for official purposes. It is urged that the Office Memorandum dated 3.10.1997 is for compensation for commuting from place of residence to place of duty, whereas scheme for reimbursement of conveyance expenditure of Respondent No. 1 is for ownership and maintenance of personal vehicle for official duties. The Petitioner since inception of his employment, in addition to reimbursement of conveyance expenditure, has been paid Transport Allowance and, hence, there is no reason why the Respondent company should not pay the Petitioner the Transport Allowance as provided by the Office Memorandum dated 3.10.1997. The Office Memorandum dated 5.9.2003 by which the Office Memorandum dated 3.10.1997 has been extended to Public Sector Enterprises, puts a ceiling of 50% of basic pay and, therefore, in the present petition a grievance has been agitated to amend the Office Memorandum dated 5.9.2003 so that the Transport Allowance should be paid by the Public Sector Enterprises to the disabled employees according to the Office Memorandum dated 3.10.1997 with no additional restrictions. In essence, the stand is that the Transport Allowance should be outside the purview of ceiling of 50% of basic pay. It is urged that the Transport Allowance mandated by the Office Memorandum dated 3.10.1997 is not a perquisite but a necessary compensation to enable the disabled employees to commute from place of residence to place of work. It is also urged that a sum of Rs. 2450/- is paid by the Respondent company to eligible employees of the Petitioner''s level, for ownership and maintenance of personal vehicles for official duties but a disabled employee requires a specially equipped vehicle with driver and/or escort and the cost of operating such a vehicle would be substantially high and, therefore, they are to be paid at twice the normal rate of transport/conveyance related expenses which is recognized by the Government of India vide Office Memorandum dated 3.10.1997. An assertion has been made in the rejoinder affidavit that the Office Memorandum dated 3.10.1997 has been modified vide Office Memorandum No. 21(2)/2008-E-II(B) dated 29.8.2008 by revising the rates of Transport Allowance payable and, therefore, the Petitioner should be paid the modified rates mentioned in Office Memorandum dated 29.8.2008. Emphasis has been laid on the 1995 Act as also the United Nations Convention on the Rights of Persons with Disabilities.

16. We have heard Mr. Rajan Mani, learned Counsel for the Petitioner and Mr. A.K. Roy, learned Counsel for Respondent No. 1.

17. The gravamen of the matter is whether under the Office Memorandum a compensation paid to a disabled person under the 1995 Act is to be paid in addition to a scheme prevalent in a public sector undertaking. Submission of Mr. Mani, learned Counsel for the Petitioner is that it is a compensation and, therefore, it is to be paid and such non-payment violates the Office Memorandum. True it is, learned Counsel has contended that Office Memorandum should cover all categories of disabled employees but as the Petitioner is getting the benefit, we do not intend to address on the said issue at

his instance. If an affected person who is not covered in the said category would prefer a petition, the same shall be appositely addressed. Mr. Mani would submit that the Respondent No. 1 has really confused the issue by fixing an amount under its scheme though the Petitioner is entitled to the same in addition to the compensation that is payable under the Office Memorandum. It is his further submission that, if a handicapped person does not engage himself in any transport and walks to the office, he is also entitled to get the amount under the Office Memorandum as compensation. Per-contra, Mr. A.K. Roy, learned Counsel for the Respondent No. 1 would contend that when the transport allowance by Office Memorandum dated 3.10.1997 had been substituted in place of conveyance allowance by the Government and the Respondent No. 1 is using terminology as conveyance allowance or reimbursement of conveyance expenditure as the case may be, the purpose and intent of both is one and the same and the Petitioner cannot avail the dual benefit. Learned Counsel would further submit that the scheme for reimbursement of conveyance expenditure has been introduced in the Respondent organization with a view to encourage the executives to own and maintain conveyance and to use such conveyance on journeys undertaken for official purposes within the limits of the city. The Petitioner at present is getting Rs. 200/- per month as a special conveyance allowance and Rs. 2,450/- as conveyance reimbursement. Thus, the benefit extended to the Petitioner is more than the Central Scheme and, hence, insistence on the Office Memorandum to give double the benefit of the normal rate to handicapped person pales into insignificance. 18. At this juncture, we think it appropriate to refer to the analysis made by the Chief Commissioner by his order dated 26.5.2006. The Commissioner in paragraphs 12 and 13 has held thus:

12. In the light of the observations of this Court in Para 10, there is no dispute that the eligible blind and employees with loco motor disability need to be compensated for the extra cost they have to incur for transportation whether the journey is performed to commute between residence and place of work or for any other official work except when the official vehicle is provided. The amount of compensation for extra cost should also be commensurate with the level of the employee, the pay and the amount of transport allowance / conveyance expenditure to other employees. Govt. of India and PS Es following CDA pattern have found the compensation amount to be double the normal rate as reasonable. The amount of Rs. 100/- being given by BHEL to its employees with disabilities irrespective of their level in the hierarchy in the organisation and the amount of normal conveyance expenditure they are entitled to, cannot be reasonable for an eligible employee with disability who is entitled to reimbursement of conveyance expenditure between Rs. 2,200/- and Rs. 2,290/-. A reasonable amount can be double the conveyance expenditure or an amount that takes care of the extra expenditure an employee with disability is forced to incur on travel to office and back or for any official work, as compared to non-disabled employees. The extra expenditure could be on account of additional cost

of accessories of the personal vehicle, fuel, maintenance of the vehicle, etc. DPE''s OM dated 5th Sept. 2003 in respect of employees of CPSE''s in IDA scale, reads as under:

...it has now been decided to extend these provisions to the blind and Orthopaedically handicapped employees with disability in lower extremities of the Central PS Es subjected to fulfilling the following conditions:

(i) In respect of IDA pattern physically handicapped employees of PS Es, they may also be extended the benefits of Transport Allowance envisaged in para 3(vi) of Department of Expenditure''s OM dated 03.10.1997 within the ceiling of 50% of the basic pay as indicated in para 12 of DPE guidelines dated 25.6.99. However, in the cases of those physically handicapped employees whose payment of perquisites in allowance exceeds 50% of their basic pay such cases may be decided on case to case basis in consultation with the administrative Ministry and DPE....

The relevant extracts of Para 3 (vi) of Department of Expenditure''s OM dated 03.10.1997 says, "...all such employees may now be paid transport allowance at double the normal rates prescribed under these orders. In case, however, such handicapped employees have been provided with Government accommodation within a distance of one kilometer from the place of work or within a campus housing the places of work and residence, the allowance would be admissible at normal rates as applicable under these orders. The allowance shall not be admissible in case such employees have been provided with the facility of Government transport..."

13. In the light of the above facts, BHEL should ensure that the complainant is compensated for the extra expenditure he has to incur on account of accessories in the car, extra fuel and maintenance which can be up to double the normal rate of transport allowance subject to his fulfilling the required conditions in terms of DPE''s OM dated 5th Sept. 2003. Alternatively, the Respondent should pay an amount arrived at by proportionately increasing Rs. 100/- to the corresponding increase in the amount of conveyance expenditure over the period since Rs. 100/- was first allowed to the eligible blind and Orthopaedically handicapped persons. Each time the conveyance expenditure was increased by the Respondent to the concerned CPSE, the transport allowance to blind and Orthopaedically handicapped employees must also be increased proportionately. This benefit should also be extended to all other employees with disabilities in BHEL and CPS Es who are eligible for transport allowance. Otherwise, the eligible employees with disabilities will be subjected to discrimination. DPE is also directed to issue necessary clarifications to all concerned to follow the above principle in the matter of grant of transport allowance or by whatever nomenclature the allowance is known, to eligible employees with disabilities to avoid inconvenience to them. The Respondent shall submit action taken report within three months of receipt of this order.

19. On a perusal of the aforesaid conclusions, it is not very clear whether the Commissioner has, after issuing notice to all concerned, determined whether the conveyance allowance paid by the Respondent is apart from the benefit available under the Office Memorandum which has been extended to the other Central Government Undertakings and Enterprises. As is manifest from the order, the Department of Public Enterprises was made a party before the said authority. The purpose of the scheme, the extension of the benefit of the scheme, the scheme of the Respondent No. 1 are required to be addressed in a comprehensive manner to arrive at the conclusion whether compensation, as put forth by the Petitioner, payable under the Central Government Scheme is imperative, despite anything being paid as a conveyance allowance to an employee. The same having not been appositely addressed, we would direct the Chief Commissioner to address the same from that perspective and record a finding. We may hasten to clarify that we are not setting aside the order as certain benefits have been given to the likes of the Petitioner and the others and that would not be fair, hence, we direct for limited reconsideration. To elaborate, the said authority would only exclusively address with regard to the facet, whether despite the benefit given by the Respondent No. 1 towards conveyance allowance, for which possession of a vehicle by a physically handicapped is a prerequisite, and the compensation has to be paid in addition to the same; whether the person can opt for either of the schemes and whether the amount given is adequate and further same deserves to be revised and can be revised as a policy matter. We may hasten to clarify that we have not expressed any opinion from any aspects with regard to the limited grounds for reconsideration. We may further proceed to state that we have been compelled to direct for reconsideration of the matter, as we feel there can be an appropriate discussion in the forum of Chief Commissioner where parties can address the grievance from all aspects and the authority can decide the matter by taking note of all aspects including comparative schemes in vogue.

20. The writ petition is accordingly disposed of without any order as to costs.

