



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 11415 OF 2014**

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**Petitioner**

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**Respondent**

Mr. Basant Kumar Bihani, petitioner-in-person.  
Dr. G. R. Sharma for respondent (UoI).

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &  
ARIF S. DOCTOR, J.**

**Reserved on : 30<sup>th</sup> JANUARY 2024**  
**Pronounced on : 6<sup>th</sup> FEBRUARY 2024**

**JUDGEMENT:** - (Per the Chief Justice)

**1.** Heard the petitioner in-person and Dr. Sharma, learned counsel representing the respondent and perused the records available before us on this writ petition.

**CHALLENGE:** -

**2.** By instituting the proceedings of this petition under Article 226 of the Constitution of India, the petitioner takes exception to the judgment and order dated 1<sup>st</sup> August 2013 passed by the Mumbai Bench of the Central Administrative Tribunal (hereafter referred to as "the CAT"), whereby Original Application No. 98 of 2011 filed by the petitioner has been dismissed.

3. The petitioner sought review of the impugned judgment and order dated 1<sup>st</sup> August 2013, which too stands dismissed by the CAT by means of the order dated 22<sup>nd</sup> August 2014. This order passed by the CAT is also under challenge in this writ petition.

4. The order dated 4<sup>th</sup> September 1995 passed by the Government of India, Ministry of External Affairs, whereby the rate of Foreign Allowance admissible to employees working on deputation in Indian Technical and Economic Cooperation Programme (ITEC), Maldives was revised and it was decided that such deputationists shall be paid a sum of Rs. 40,845/- if they were drawing pay above Rs. 3000/- per month instead of Rs. 50,340/- as admissible to Second Secretary level officer working in the Indian Mission in Maldives, is also under challenge in this petition.

5. The further prayer made by the petitioner in this writ petition is that appropriate direction or order may be issued to the respondent quashing the order dated 10<sup>th</sup> January 2001, whereby the claim of the petitioner to pay Foreign Allowance of Rs. 50,340/- has been rejected. It is also the prayer made by the petitioner that a direction may be issued to the respondent to pay him the withhold amount of Rs. 2,21,000/- along with interest.

**FACTS IN BRIEF: -**

6. This case presents before us a chequered history of litigation, wherein the petitioner is engaged since the year 2000. The petitioner, who was a member of Indian Railway Personnel Service (IRPS), was appointed on deputation on the post of Deputy Director (Administration) to Indira Gandhi Memorial

Hospital at Male (Maldives) [hereafter referred to as "IGMH at Male (Maldives)"] by means of an order dated 2<sup>nd</sup> September 1993. The said hospital was being run by the Government of India as a goodwill gesture to the Government of Maldives under the ITEC programme. The order of appointment of the petitioner on deputation dated 2<sup>nd</sup> September 1993 provided that the period of deputation shall be three years and that he shall be paid pay of Rs. 3100/- per month in the pay-scale of Rs. 3000-100-3500-125-4500. In addition to the pay in the said pay-scale, the order of deputation also provided that the petitioner shall be paid compensatory allowance of Rs.15,485/- per month, which included certain components. The order of deputation also provided that all other terms and conditions of deputation will be those contained in Annexure III to the letter of the Ministry of External Affairs, Government of India, dated 2<sup>nd</sup> February 1987 as amended from time to time.

**7.** Apart from providing the terms of deputation in the order of appointment dated 2<sup>nd</sup> September 1993, the Ministry of External Affairs issued a letter dated 4<sup>th</sup> October 1993 to the petitioner forwarding therewith the terms and conditions for his deputation under the ITEC programme to the IGMH at Male (Maldives). The letter dated 4<sup>th</sup> October 1993 contained an enclosure, wherein certain facilities, to which the Government of Maldives had agreed to provide to the deputationists from India, were set out. In clause (6) of the said enclosure appended to the letter dated 4<sup>th</sup> October 1993, it is clearly mentioned that the petitioner having been appointed on deputation to Maldives shall be entitled to free supply of electricity and rain/desalinated water and ground water. Clause (1) of the said enclosure also

provided that the deputationists from India (like the petitioner) shall be entitled to fully furnished family accommodation commensurate with their rank and status, if the same is not available/suitable in IGMH complex. The facility of fully furnished accommodation was subject to certain conditions and one of the conditions was that the deputationists shall be entitled to free supply of electricity and rain/desalinated water and ground water. Clauses (1) and (6) of the enclosure appended with the letter dated 4<sup>th</sup> October 1993 communicated to the petitioner by the Ministry of External Affairs are extracted hereinbelow: -

*"1. Fully furnished family accommodation commensurate with the deputationist's rank and status (when not available/suitable in the IGMH complex) and approved in advance by the High Commission of India, Male subject to the following conditions: -*

- (a) The allotment of housing at the IGMH complex and outside will be decided by Chief Executive on the basis of necessity and requirement of work.*
- (b) Duration of stay of each personnel or their replacements, if any, will be five years from the date of first arrival or till the termination of their services, whichever is earlier, as decided mutually by the two Governments.*

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*6. Free supply of electricity and rain/desalinated water and ground water for deputationists who stay at the complex."*

**8.** As observed above, one of the conditions mentioned in the order of appointment of deputation of the petitioner, dated 2<sup>nd</sup> September 1993 provided that all other terms and conditions of

deputation will be those contained in Annexure III to the Ministry's letter dated 2<sup>nd</sup> February 1987. The letter of the Ministry of External Affairs, dated 2<sup>nd</sup> February 1987 was issued on the subject of terms and conditions of Indian Experts deputed to foreign countries under the ITEC programme. The said letter contains three Annexures and Annexure III is in respect of long-term experts whose deputation period shall be one calendar year or more. Since the order of deputation of the petitioner, dated 2<sup>nd</sup> September 1993 clearly mentioned the period of deputation to be of three years, the terms and conditions as embodied in Annexure III enclosed with the letter dated 2<sup>nd</sup> February 1987 would be applicable to the petitioner.

**9.** The terms and conditions applicable to the long-term experts, i.e., whose period of deputation was one calendar year or more as described in Annexure III enclosed with the Ministry's letter dated 2<sup>nd</sup> February 1987, provided that a deputationist shall be entitled to pay which may be admissible in his parent department/service in India from time to time and further that such deputationist shall not be entitled to allowance such as Dearness Allowance, interim relief, City Compensatory Allowance, House Rent Allowance etc., which he might have been drawing in India prior to his deputation. It further provided that the ITEC Experts appointed on deputation shall also be entitled to draw compensatory (Foreign) allowance at the rate fixed for the country of assignment by the Ministry of External Affairs from time to time. Clause (2) of Annexure III appended to the Ministry's letter dated 2<sup>nd</sup> February 1987 reads as under:-

"2. *Compensatory (Foreign) Allowance:*

(i) *The expert will be entitled to draw compensatory (foreign) allowance at the rate fixed for the country of assignment by the Ministry of External Affairs from time to time. This allowance will be reduced by 50% if the recipient Government provides full board and lodging, free of charge to the expert or adequate allowance to cover both. If an allowance is given by the recipient Government in lieu of board and if it is less than the compensatory (foreign) allowance admissible in the country the difference between the two may be sanctioned by the Government of India.*

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**10.** Thus, as far as payment of Foreign Allowance to the petitioner is concerned, he was to be governed by the terms and conditions contained in Annexure III appended to the Ministry's letter dated 2<sup>nd</sup> February 1987, clause (2) of which provided that he shall be entitled to Foreign Allowance at the rates fixed by the Ministry of External Affairs.

**11.** The Ministry of External Affairs, Government of India had issued an order dated 16<sup>th</sup> February 1989, which re-fixed the Foreign Allowance payable to non-IFS Group-A officers (Non-Indian Foreign Service Group-A officers) and accordingly provided that the non-IFS officer drawing the pay in the pay-scale 3000-4500 shall be made available the Foreign Allowance payable to the Second Secretary level officer belonging to Indian Foreign Service, if he was drawing pay below Rs. 3750/- per month and in case such a non-IFS officer was drawing pay of Rs. 3750/- per month and above, he shall be entitled to Foreign Allowance payable to First Secretary Rank officer.

**12.** It is the case of the petitioner that pursuant to his appointment on deputation made vide order dated 2<sup>nd</sup> September 1993, he joined as Deputy Director (Administration) at IGMH at Male (Maldives) under the ITEC programme and was paid, apart from the pay and other perquisites, the Foreign Allowance admissible to the Second Secretary rank IFS officer working with the Indian Mission, however, as per the order dated 4<sup>th</sup> September 1995, the Foreign Allowance paid to the petitioner was less than which was admissible to the Second Secretary rank officer. It is this order dated 4<sup>th</sup> September 1995, which is the bone of contentions between the parties. The petitioner, for redressal of his grievances arising out of the order dated 4<sup>th</sup> September 1995, preferred an Original Application before the Principal Bench of CAT at Delhi in September 2000, which was decided with a direction to the appropriate authority of the respondent to treat the said original application as a representation of the petitioner and decide the same.

**13.** Pursuant to the aforesaid order passed by the Principal Bench of CAT at Delhi, the representation of the petitioner was considered, however, the same was rejected by means of an order dated 10<sup>th</sup> January 2001 passed by the respondent, whereby it was observed that though Compensatory Allowance to Indian experts deputed and brought under the ITEC programme is the same as paid to an officer of the equal rank in the Indian Mission in that particular country, however, it is subject to slab deductions as per the instructions issued by the Ministry of External Affairs. The order dated 10<sup>th</sup> January 2001 further states that the electricity, water and fuel (EWF) charges

in respect of the accommodation provided by the host country are paid by the host Government, then, EWF component, which is part of the Compensatory Allowance to be paid to such experts is deducted and accordingly, the allowance for ITEC expert is reduced by an amount equal to EWF component included in the Foreign Allowance paid to the Embassy officials of equal rank.

**14.** The order dated 10<sup>th</sup> January 2001 rejecting the claim of the petitioner also recites that since the Government of Maldives had provided to the ITEC experts free accommodation, medical and local transport facilities, therefore, the Foreign Service Inspectors (FSI) recommended that Foreign Allowance payable should be adjusted so that the compensation related to electricity and water should not be included in the Foreign Allowance payable to ITEC experts at the IGMH at Male (Maldives). It is also stated in the said order that on such recommendation of the FSI, based on his visit to Male (Maldives) in March 1995, the Foreign Allowance of ITEC experts working at IGMH at Male (Maldives) has been revised taking into consideration, *inter alia*, the fact that such experts were being provided EWF components free by the country of assignment, i.e., Maldives.

**15.** The petitioner challenged this order dated 10<sup>th</sup> January 2001 by instituting another Original Application before Patna Bench of CAT, which was decided on 6<sup>th</sup> January 2004 in favour of the petitioner. However, this order passed by the Patna Bench of CAT dated 6<sup>th</sup> January 2004 was not complied with and after a considerable time, the same was challenged by the respondents by instituting Writ Petition No. 8818 of 2008 before



Hon'ble High Court at Patna. The said writ petition was decided by Hon'ble Patna High Court by means of its judgement and order dated 6<sup>th</sup> July 2010, whereby the matter was remitted to the Patna Bench of CAT. The original application, which stood revived as a consequence of the decision of Hon'ble Patna High Court dated 6<sup>th</sup> July 2010, was later on transferred at Mumbai Bench of CAT and was re-numbered as Original Application No. 98 of 2011.

**16.** The Mumbai Bench of CAT, however, dismissed the said original application by means of the impugned judgment and order dated 1<sup>st</sup> August 2013. The petitioner sought review of the said order of CAT, Mumbai, which too has been dismissed by means of the order dated 22<sup>nd</sup> August 2014. It is these two orders which are under challenge before us in this writ petition.

**SUBMISSIONS MADE BY THE PETITIONER: -**

**17.** Impeaching the impugned orders passed by the CAT as also the orders dated 4<sup>th</sup> September 1995 and 10<sup>th</sup> January 2001, the petitioner has vehemently submitted that once the terms of deputation as provided in the order of his appointment on deputation dated 2<sup>nd</sup> September 1993 were accepted by him and he submitted his joining pursuant to his order of appointment, he was entitled to the Foreign Allowance in terms of the order of appointment and the provisions contained in the Annexure III appended to the Ministry's letter dated 2<sup>nd</sup> February 1987, coupled with the provisions contained in the order of Government of India, dated 16<sup>th</sup> February 1989. His submission in fact is that for quite considerable period of his deputation, the petitioner was paid Foreign Allowance as admissible to Second Secretary level officer working in the

Indian Mission at Maldives, which was perfectly in tune with terms of his appointment of deputation, however, by passing the order dated 4<sup>th</sup> September 1995, the amount of Foreign Allowance has been reduced without there being any plausible reason or rationale.

**18.** The petitioner has further argued that Foreign Allowance, as can be understood from the terms of his appointment order of deputation dated 2<sup>nd</sup> September 1993, the provisions contained in Annexure III appended to the Ministry's letter dated 2<sup>nd</sup> February 1987 and the order of Ministry of External Affairs, dated 16<sup>th</sup> February 1989, is the lumpsum amount which does not contain any mention of any specific component like EWF.

**19.** Drawing our attention to the report of FSI team submitted in the year 1995, which is available at page 168 of the writ petition, it has been submitted by the petitioner that the deduction from amount of Foreign Allowance was recommended by the Inspectors in contravention of the terms of his deputation. He has also stated that in any case even the said report does not mention about any deduction on account of fuel component; it rather mentions deductions based on the electricity and water components only, which was borne by the Maldives Government.

**20.** The sum and substance of the arguments made by the petitioner is that fixation of amount of Foreign Allowance payable to the petitioner less than what was payable to Second Secretary rank officers in the mission is against the terms and conditions on which the petitioner was appointed on deputation. He has also drawn our attention to an order dated 4<sup>th</sup>

September 1995 issued by the Ministry of External Affairs, whereby, while revising the Foreign Allowance payable to the Second Secretary level officers, amount has been fixed to be Rs.50340/- in case such Second Secretary level officer was drawing pay above Rs. 3,000/- and Rs. 50,365/- if he was drawing pay up to Rs. 3000/- per month. It has been stated that while effecting the revision of Foreign Allowance in case of the petitioner vide another order dated 4<sup>th</sup> September 1995, the amount fixed was Rs. 40,845/- though under the terms of deputation on which the petitioner accepted the appointment at IGMH at Male (Maldives), he was entitled to the same amount of Foreign Allowance as payable to the Second Secretary level officer working in the Indian Mission. He, thus, claims that the difference of the Foreign Allowance payable to the Second Secretary rank officer and the Allowance actually paid to the petitioner has wrongly been withheld.

**21.** As regards the reasons indicated in the order dated 10<sup>th</sup> January 2001, whereby the claim of the petitioner has been rejected by the respondent, it has been argued by the petitioner that the reasons are not germane, inasmuch as that the respondents have wrongly deducted the amount of EWF components solely on the ground that the same was paid by the Government of Maldives. The reason given by the petitioner for such argument is that the letter dated 4<sup>th</sup> October 1993 communicated to the petitioner at the time of his appointment on deputation clearly stated that he shall also be entitled to certain facilities which shall be provided by the Government of Maldives, including the facility of fully furnished family accommodation, free supply of electricity and rain/desalinated

water and ground water. It is also his argument that prior to 4<sup>th</sup> September 1995, deduction from Foreign Allowance was rightly not made to the extent of the EWF components, as such deduction was contrary of his terms of deputation as communicated to him by mean of the appointment order dated 2<sup>nd</sup> September 1993 and the letter dated 4<sup>th</sup> October 1993.

**22.** The petitioner has further stated that the CAT, while considering the Original Application filed by him, has completely failed to take into consideration the aforesaid aspects of the matter which renders the impugned judgment passed by the CAT as unsustainable.

**SUBMISSIONS ON BEHALF OF THE RESPONDENT: -.**

**23.** On the other hand, Dr. Sharma, learned counsel representing the respondent has argued that the deduction of EWF component from the Foreign Allowance paid to the petitioner was rightly made on the report submitted by the FSI team. He has also argued that in case the electricity, water and fuel charges were paid by the country of assignment, i.e., Maldives, no question of including such components in the foreign Allowance arises. He has also stated that by claiming these components to be included in the amount of Foreign Allowance payable to the petitioner, in fact, the petitioner is attempting to take double benefit for the reason that he is claiming the said amount pertaining to EWF component from the Government of India, which, in fact, was compensated by the country of assignment, i.e., Maldives.

**24.** Dr. Sharma has, thus, argued that the deduction of the EWF components from the Foreign Allowance of the petitioner is, thus, rightly made as recommended by the FSI team in the

year 1995 and any contrary claim as put-forth by the petitioner is, thus, not tenable. He has also argued that the claim of the petitioner was rightly rejected by the respondents by passing the order dated 10<sup>th</sup> January 2001, which is in consonance with the Government order dated 4<sup>th</sup> September 1995. The learned counsel for the respondent has, thus, stated that neither the order dated 10<sup>th</sup> January 2001 nor the judgement and orders passed by the CAT, which are under challenge herein, suffer from any illegality so as to call for any interference by the Court in exercise of its jurisdiction under Article 226 of the Constitution of India. He has, thus, prayed that the writ petition be dismissed.

**ISSUE:** -

**25.** On the basis of pleadings available on record and the submissions made by the petitioner and the learned counsel for the respondent, the issue which emerges for our consideration is as to whether the deduction of EWF component from the amount of Foreign Allowance paid to the petitioner contravenes the terms of deputation on which he was appointed as ITEC expert at IGMH at Male (Maldives)?

**Discussion:** -

**26.** Service jurisprudence recognises deputation as a mode of appointment where consent of and agreement amongst three parties, namely, (i) the parent department, (ii) the borrowing department and (iii) the employee concerned, are required to be present. An employee ordinarily agrees to take an assignment or appointment on deputation to the borrowing department on certain representation or terms and conditions offered to him by the borrowing department. As a matter of fact, in absence of

consent or agreement amongst all the three parties involved in any instance of appointment on deputation, i.e., the parent department, the borrowing department and the employee concerned, no such appointment on deputation is permissible or possible. Once the employee accepts the terms and conditions and consents for being appointed on deputation to the borrowing department, in our opinion, any deviation from such terms and conditions agreed upon between the three parties will not be permissible. We have, thus, to analyse the claim of the petitioner on this settled legal principle of service jurisprudence.

**27.** We have already noticed that the order appointing the petitioner on deputation dated 2<sup>nd</sup> September 1993 clearly mentions that apart from being paid the pay of Rs. 3,100/- in the pay-scale of 3000-100-3500-125-4500, the period of deputation of the petitioner would be three years. The said order of appointment on deputation also contains an unequivocal clause that the other terms and conditions of deputation will be governed by what has been provided in Annexure III to the Ministry's letter dated 2<sup>nd</sup> February 1987. Clause (iii) of the order of appointment on deputation of the petitioner, dated 2<sup>nd</sup> September 1993 is quoted herein below: -

*"(iii) All other terms and conditions of the deputation will be those contained in Annexure III to this Ministry's letter No. B.235/43/81 (235/86/87) dated 2.2.87 as amended from time to time".*

**28.** It is also worthwhile to notice that at the time of his appointment on deputation under the ITEC programme to IGMH at Male (Maldives), the petitioner was intimated by the Ministry of External Affairs, Government of India, vide its letter dated 4<sup>th</sup>

October 1993, that he shall be entitled to certain facilities, such as facility of fully furnished family accommodation and free supply of electricity and rain/desalinated water and ground water, which the Government of Maldives had agreed to provide. The said facilities are mentioned, as noticed above, in the enclosure appended to the Ministry's letter dated 4<sup>th</sup> October 1993, which we have already extracted hereinabove. It is further to be noticed that Annexure III appended to the letter dated 2<sup>nd</sup> February 1987 clearly stipulates that the deputationists will be entitled to draw compensatory (Foreign) Allowance at the rates fixed for the country of assignment by the Ministry of External Affairs from time to time.

**29.** The order dated 16<sup>th</sup> February 1989 issued by the Ministry of External Affairs clearly stipulates that the non-IFS Group-A officers shall be entitled to Foreign (Compensatory) Allowance at par with such allowance payable to Second Secretary level officer working with the Indian Mission in the foreign country.

**30.** Thus, a cumulative reading of the terms and conditions provided in the order of appointment on deputation of the petitioner, dated 2<sup>nd</sup> September 1993, the order issued by the Ministry of External Affairs dated 16<sup>th</sup> February 1989 and the provisions contained in Annexure III appended to the Government letter dated 2<sup>nd</sup> February 1987 makes it undisputedly clear that so far as payment of Foreign Allowance to the petitioner is concerned, he was entitled to the same amount as was made admissible to the Second Secretary level officer working with the Indian Mission at Male (Maldives). Any reduction of the amount of Foreign Allowance from the amount payable to the Second Secretary level officer working with

Indian Mission, in our considered opinion, would, thus not be permissible.

**31.** As far as the reason given by the respondent, while rejecting the claim of the petitioner bypassing the order dated 10<sup>th</sup> January 2001, we may note that the same is based on the FSI team's report, which had opined that since the Government of Maldives had provided ITEC experts free accommodation, medical and local transport facilities, therefore, it was recommended that the Foreign Allowance payable should be adjusted so that the compensation on account of electricity and water should not be included in the said amount payable to ITEC experts of IGMH at Male (Maldives). This reason, in our opinion, is not tenable for the reason that at the time of his appointment on deputation, the order of the Government of India dated 16<sup>th</sup> February 1989 ,in unambiguous terms, provided that the non-IFS Group-A officers shall be entitled to the same amount of Foreign Allowance as is admissible to the Second Secretary level officers working with the Indian Mission in the Foreign Country concerned.

**32.** A mention of the contents of the enclosure appended to the letter dated 4<sup>th</sup> October 1993, which was communicated to the petitioner at the time when he accepted appointment on deputation, is also relevant to be reiterated, which clearly provided that the petitioner shall be provided facility of fully furnished family accommodation along with free supply of electricity and rain/desalinated water and ground water by the Government of Maldives. It is on the basis of such terms and conditions, as contained in the enclosure appended to the letter dated 4<sup>th</sup> October 1993, the order of the Ministry of External



Affairs dated 16<sup>th</sup> February 1989 and Annexure III appended to the letter of the Government dated 2<sup>nd</sup> February 1987, which were communicated to the petitioner, that the petitioner agreed to be appointed on deputation as Deputy Director (Administration) to IGMH at Male (Maldives).

Thus, if we consider the reasons given in the order dated 10<sup>th</sup> January 2001 denying the claim of the petitioner for payment of Foreign Allowance equivalent to the amount of such allowance admissible to the Second Secretary level officer working with the Indian Mission, we have no hesitation to hold that the said reasons are untenable being in violation of the terms and conditions on which the petitioner was appointed on deputation by means of the order dated 2<sup>nd</sup> September 1993. At the time of his appointment on deputation itself, it was communicated to the petitioner that it is the Government of Maldives which shall provide him the facility of fully furnished family accommodation free of charge and supply of electricity and rain/desalinated water and ground water. On such an offer only, the petitioner had consented for his appointment on deputation and accordingly, the respondent cannot be permitted to resile from the offer made on the basis of which the petitioner was appointed on deputation as Deputy Director (Administration) at IGMH at Male (Maldives).

**33.** Reliance placed by Dr. Sharma representing the respondent on the order of Ministry of External Affairs dated 4<sup>th</sup> September 1995 will have no application to the facts of the present case for the reason that at the time when the petitioner was appointed on deputation, i.e., on 2<sup>nd</sup> September 1993, the said order was not in vogue. Rather, the field was governed by

the circular/letter dated 2<sup>nd</sup> February 1987 and the order of Government of India in the Ministry of External Affairs dated 16<sup>th</sup> February 1989.

**CONCLUSION:** -

**34.** On the basis of the analysis made by us in the preceding paragraphs, we have no doubt in our mind that the petitioner was entitled to be paid the amount of Foreign Allowance equivalent to the Foreign Allowance admissible to the Second Secretary rank officer working in the Indian Mission and further that any reduction in the said amount will amount to violation of the terms and conditions on which the petitioner's appointment on deputation was made as an expert at IGMH at Male (Maldives). The terms, on which an order of appointment of deputation of an employee is made, does not bind the employee alone; the parent department as also the borrowing department are equally bound by such terms. In case the contention of the respondent is accepted, the same will amount to explicit violation of the terms and conditions of the deputation, on acceptance of which the petitioner had given his consent to be appointed on deputation. We are, thus, of the opinion that the reasons given in the impugned order dated 10<sup>th</sup> January 2001, whereby the claim of the petitioner was rejected, are untenable. We also find that the Government order dated 4<sup>th</sup> September 1995, which fixes Rs. 40,845/- as Foreign Allowance admissible to the petitioner is also untenable; in fact, the petitioner would be entitled to the same amount of Foreign Allowance which was made available to the Second Secretary level officer working with the Indian Mission at Male (Maldives), i.e., Rs. 50,340/-. Reduction in the amount of Foreign Allowance was, thus, illegal.

**35.** There is yet another issue which is in regard to the prayer of the petitioner for grant of interest on the payment of withheld amount of Foreign Allowance on account of illegal reduction made by the respondent. It is settled law that if it is established that an amount legally due to a party is not paid, the party responsible for withholding the same must pay interest at a rate considered reasonable by the court. The Hon'ble Supreme Court, in the matters relating to illegal withholding of allowances, has opined that a situation where an amount to which a party was legally entitled to was not paid, the party responsible for such non-payment has to be saddled with responsibility of paying interest at a rate which may be considered reasonable by the Court. The said enunciation of law can be found in para 4 of the Judgment in the case of **Union of India vs. Justice S. S. Sandhawalia (Retd.) & Ors.**<sup>1</sup> which is extracted hereinbelow:-

*"4. From the foregoing discussion it becomes clear that the Union of India contested the writ petition in the High Court only in regard to the entitlement of the cash equivalent of the allowances including the benefit conferred by Section 22-B of the 1954 Act and the cash benefit claimed for failure of the State of Bihar to provide the original petitioner with a staff car. The Union Government had conceded the demand for the grant of rupees one lakh by way of death-cum-retirement gratuity and had paid the balance of Rs. 51,000 to the original petitioner. Since this payment was delayed by a year or so, the original petitioner claimed interest on the balance amount at 12% per annum, which has been rightly allowed by the High Court. Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable*

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<sup>1</sup> (1994) 2 SCC 240

*by the Court. Therefore, we do not see any reason to interfere with the High Court's order directing payment of interest at 12% per annum on the balance of the death-cum-retirement gratuity which was delayed by almost a year. We uphold this part of the High Court's order."*

**36.** Applying the aforesaid principle laid down by the Hon'ble Supreme Court in the aforementioned case, we are convinced that since a portion of amount of Foreign Allowance was illegally withheld, which the petitioner was entitled to, the petitioner is entitled to payment of interest on such payment to be fixed at a rate which is considered appropriate in the facts and circumstances of the case by the Court.

### **ORDER**

- (i) The writ petition is allowed.
- (ii) The judgement and order dated 1<sup>st</sup> August 2013 and the order dated 22<sup>nd</sup> August 2014 passed by the CAT are hereby quashed.
- (iii) The order dated 10<sup>th</sup> January 2001 passed by the respondent rejecting the claim of the petitioner is also hereby quashed.
- (iv) The order bearing No. Q/FD/6918/3/95-A dated 4<sup>th</sup> September 1995 of the Ministry of External Affairs, Government of India as contained in Exhibit '6' to the writ petition so far as it affects the petitioner, is quashed.
- (v) The respondent is directed to pay the petitioner difference of Foreign Allowance to be calculated on the basis of amount of Foreign Allowance paid to the Second Secretary level officer in the Indian Mission at Male (Maldives) along with simple interest at the rate of 6% p.a. from the date payment of such amount was due till the date it is actually paid, within a

period of three months from the date a certified copy of this order is produced before the authority concerned.

**37.** There shall be no order as to costs.

JAYANT  
VISHWANATH  
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Date: 2024.02.08  
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**(ARIF S. DOCTOR, J.)**

**(CHIEF JUSTICE)**