

13

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.3002/2001

New Delhi, this the 6 day of February, 2003

Hon'ble Shri Govindan S. Tampi, Member (A)

Shri S. Sugunan  
son of Late Shri P.K.Srinivasan  
Aged 50 years  
Dy. Armament Supply Officer Grade II  
Naval Headquarters  
DGAS/West Block No.V  
R.K.Puram, New Delhi-66

Residing at D-503 P.V. Hostel, Lodhi Road  
New Delhi-3

..Applicant

(By Advocate: Shri S. Sasi Bhushan)

Versus

1. Union of India  
through the Defence Secretary  
Ministry of Defence, South Block  
New Delhi-11
2. The Secretary  
Dept. of Expenditure  
Govt. of India,  
Ministry of Finance,  
North Block, New Delhi-11
3. The Chief of the Naval Staff  
Naval Headquarters  
South Block, New Delhi-11

..Respondents

(By Advocate: Shri B.S. Jain)

O R D E R

Shri S. Sugunan, the applicant in this case, is aggrieved that the pecuniary benefits available to Central Services Gr. "A" Gazetted Officers while undergoing mandatory in-service training/course, was denied to him.

2. During the oral submissions, Shri S. Sasi Bhushan and Shri B.S. Jain, learned counsel represented the applicant and the respondents, respectively.

137D

-2-

3. The applicant, who joined the respondents' organisation as a Senior Chargeman in 1974, was successively promoted as Foreman in 1980, Senior Foreman in 1985 and Assistant Armament Supply Officer in 1992. He came to Naval Headquarters (New Delhi) as Deputy Armament Supply Officer Grade II in 1996. On 27.2.1998, the applicant, along with few others, was sent on permanent transfer for duration of 322 days to Naval Armament Depot, Visakhapatnam for in service training and was transferred back on successful completion of the training. He was granted TA/DA, joining time, etc. for his movement, treating it as permanent duty. During the course of the training, the applicant was also granted allowances for training in out States than Visakhapatnam. While he submitted his claim, he was asked to limit the claim as if he had gone only for 180 days temporary duty. On his representing against it, the respondents started recovering the HRA, TA, etc. already paid during the course of the training and this recovery amounted to nearly Rs.45000/-. They refused the grant of Rs.24000/- on transfer and withheld the daily allowance of Rs.5800/- passed by the authorities at Visakhapatnam. In effect, the applicant's claim was restricted to 180 days out of 322 days on the alleged ground that any training exceeding 180 days is a permanent duty and was treated to be a permanent transfer, irrespective of whether 180 days DA was paid in lieu of permanent duty TA/DA. As there appears to be difference in interpretation among the various officers of the same organisation at Delhi, Mumbai, Visakhapatnam and Alwaye, the applicant made representations, but to no avail. Hence, this OA.

4. The grounds raised in this OA are that:-

-3-

- (i) the action of the respondents was arbitrary, mala fide and illegal,
- (ii) there has been discrimination in interpreting orders and payments were being made differently; and
- (iii) the applicant was being victimized for raising the above points.

This warranted interference by the Tribunal, urges he.

5. On behalf of the respondents, it is pointed out that the orders issued by the respondents were correct. In terms of Government of India, Ministry of Defence letter No. AS/2231/1871/Do(T)/D (N-II) dated 24.12.1997, the applicant was only entitled to travelling allowance as admissible under the normal rules for attending course of instructions and, therefore, his entitlement had to be accordingly regulated. The OA was time barred inasmuch as it was filed in November, 2001, as against the reply issued on 28.5.1999 to his representation of 3.5.1999. The applicant was detailed to attend the training course from 1.6.1998 to 17.3.1999. In spite of the mention made in the letters of the Naval Headquarters dated 27.2.1998 and 27.5.1998, the officer was not on permanent transfer as (a) he was not struck off of the strength of the Naval HQ, New Delhi and was taken on the strength of Naval Visakhapatnam, (b) his pay and allowances were continued to be drawn from Navy Headquarters, (c) he was permitted to retain his Govt. accommodation in Delhi, which was not possible, if he had been transferred out, (d) he had only taken the advance for 180 days of training period and not for 32 days; and (e) the applicant had in fact been only on temporary duty outside and the consequential pecuniary benefits were sanctioned to him. The applicant, who was

-4-

paid TA/DA when he proceeded on training, is found to have drawn HRA and transport allowance at the place of training, which was not correctly done. His request for treating as if he was on transfer to Visakhapatnam is not justified/ correct. His TA bill was not allowed as his move to Visakhapatnam was not a case of transfer. Similarly, HRA and transport allowance made inadvertently had also to be recovered. As the applicant was paid HRA at Delhi for the purpose while he underwent training at Visakhapatnam, the same was correctly rejected. He could not have, therefore, claimed HRA at Visakhapatnam. Similarly, the applicant is <sup>not</sup> <sub>entitled</sub> for transport allowance and the transport allowance given wrongly had to be recovered. Those proceeding on training exceeding 180 days could draw the TA as on transfer on duty. The applicant had opted TA/DA as on tour for the first 180 days. This in fact had been given to him. As it has been found that there has been some over payment orders were issued for recovery, the same has been given effect to. His claim was that he was on permanent duty has absolutely no basis. His averment that other persons have been extended the benefit. What has happened is only the inadvertent and wrong payment of TA/DA of 67 days to the applicant and the same had been correctly recovered. The allegations of injustice and the violation of equality clause of Article 14 of the Constitution are misplaced. The concept of allowance is for compensating the loss a Government servant put to and not for permitting any office of profit. OA, therefore, has to fail is what the respondents plead.

-5-

6. I have carefully considered the matter. The preliminary objections raised by the respondents regarding the aspect of limitation and non-maintainability of the OA are without any merit and are accordingly rejected. It is seen that by order No.CP (G)/2112 dated 27.2.1998, the applicant was transferred from Naval Headquarter to NAD, Visakhapatnam for undergoing technical training for DASO-II and letter No.AS/0517 dated 27.5.1998 shows the movement as permanent transfer as AD. It is evident, therefore, that the applicant stood transferred to Visakhapatnam for the period of training. He has returned by Headquarter's order No.CP(G)/2112 dated 12.3.1999 on the successful completion of training. It would, therefore, be clear that during the period of training the applicant stood transferred to Visakhapatnam. Accordingly, all the attendant benefits of transfer would be available to him. It would also mean that he would be entitled for allowances for moving out of Visakhapatnam during the course of his training, as the said place had become station Headquarters. The applicant could not have been attached to both Headquarters and NAD at the same time. Therefore, once it is accepted that the applicant went on transfer to NAD, he would be entitled for all the benefits which would accrue from that movement. On the other hand, if he was only on training/tours, he would be entitled for the grant of DA for the first 180 days. In which case, for the movement outside Visakhapatnam during the said period, he would not be entitled for any further DA or allowances, as there cannot be two sets of daily allowance. Simultaneously, he would also be entitled for the benefit of HRA/CCA at the Delhi rates. In short, he would be entitled for payment of allowances either as on transfer or on tour and not for any combination of the two.

-6-

while the applicant is seeking to gain the advantages both transfer and tour, the respondents are seeking to grant him the benefit of neither. Both of the approaches are wrong and cannot be endorsed.

7. In the above circumstances, the OA succeeds to some extent and is accordingly disposed of. The applicant is treated to be on transfer from the Army Headquarters to Naval Armament Depot, Visakhapatnam, on transfer in terms of letter dated 27.2.98 and 27.5.98 and transfer back to Delhi, by order dated 12.3.99. The applicant would therefore be entitled to transfer TA from Delhi to Visakhapatnam and for DA for the trips made from Visakhapatnam to other places on training. He would at the same time be not entitled for HRA, CCA at the Delhi rates, and if they have been granted they are liable for recovery. Respondents shall take action to work out the amount payable in the above view of the matter and sanction the same, within two months from the date of receipt of a copy of this order. No costs.

(Govindan S. Tampli)  
Member (A)

/sunil/