

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

O.A. No.292 of 1998 decided on 19.5.1999

Name of Applicant : R.A.Singh

By - Applicant in person

Versus

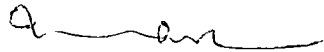
Name of respondent/s Union of India & others

By Advocate : Shri S.M.Arif

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes
2. Whether to be circulated to the other Benches of the Tribunal. -No

  
(N. Sahu)  
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.292 of 1998

New Delhi, this the 19th day of May, 1999

Hon'ble Mr. N. Sahu, Member(Admnv)

R.A.Singh, S/o late Shri Hawaldar Singh,  
Presently on deputation to C.A.T.,  
Principal Bench (Finance Wing) as Deputy  
Controller of Accounts

- APPLICANT

(Applicant in person)

Versus

1. Union of India Represented through  
Secretary, Ministry of Defence, South  
Block, New Delhi.

2. The Financial Adviser, Ministry of  
Defence, South Block, New Delhi.

3. The Controller of Defence Accounts, 'G'  
Block, Hutments, New Delhi - RESPONDENTS

(By Advocate Shri S.M. Arif)

O R D E R

By Mr. N.Sahu, Member(Admnv)

The prayer in this Original Application is to set aside the order dated 3.11.1997. Claim of interest on delayed payment; Overseas Allowances for the transit period; and claim of refund of recovery on account of telephone charges have been rejected.

2. The admitted facts are that the applicant went as Part of Indian Troops Contingent for United Nations Angola Verification Mission-III ( in short "UNAVM-III") on deputation for a period of one year. The Govt. of India, Ministry of Defence in its letter No. 17(28)94/D(GS.1) dated 25.4.1995 stated that the terms and conditions of participation in Peace Keeping Operations at Angola, would be at par with the terms and conditions approved for troop

contingent as per Annexure to Ministry of Defence letter No. F.17(6)/94/D(GS).I dated 17.4.1995. The letter dated 25.4.95 also stated that during the period of deputation the applicant would hold the rank and status of substantive Major.

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3. The applicant's grievance is that the final claim for payment of Overseas Allowance for the month of July and August, 1996 up to 9.8.1996 was raised in October, 1996. The payment for July 1996 was made to him in March, 1997 and the payment for August, 1996 was finally made on 21.9.1997 after deducting US \$ 192.96 comprising of the following amounts - (a) transit period allowance : \$ 70.65 and (b) telephone charges : \$ 122.31. He is aggrieved by the recoveries made as also the delay in making the payment of the amounts due for July and August, 1996.

4. According to para 4 of the Annexure to the Ministry of Defence letter dated No. 17(6) /94/D (GSI) 17.4.1995 [Annexure -R-4(1)] "[T]he deputation period shall commence from the date of departure of the personnel from India to Angola and the personnel will be deemed to be at the disposal of the UN from that date. The deputation will cease on the date when they return to India after expiry of their deputation tenure with UNAVM-III". Under para 8(b) of the letter dated 17.4.95 the applicant was entitled to payment of Overseas Allowance at the rate of US \$2190 per month during the deputation period.

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5. The applicant departed from Delhi on 21.7.1995 and returned to India on 9.8.1996. He protested against recovery of \$ 192.96 on account of telephone charges and transit period allowance for one day. He was aggrieved by the recovery of telephone facilities because he did not use the telephone. The said telephone was under control and custody of the Commanding Officer. The applicant was stationed at Rear Camp (Indbat) at a place known as Viena and the telephone was in a place called UIG at a distance of 500 miles. The only mode of commuting is by flight. That apart, the operation of the telephone is strictly under the control of the army and whosoever wanted to utilize the telephone had to log an entry to that effect. Therefore, there was no chance for any unauthorised call unknown to the Commanding Officer who maintained under the Army Rules a strict record of the calls made. Under the circumstances it is submitted that the recovery of the amount uniformly from all members of the Misson including the applicant who is a civilian officer was unjust and arbitrary. He himself placed before the authorities the number of calls made by him.

6. The Indian Troops (14 Punjab Bn GP) deployed in July, 1995 was replaced by another Indian Troops (16 Guards Bn GP) in the year 1996. Having deployed the Troops in UN Mission and agreed for their stay beyond the stipulated period of one year, the Ministry of Defence could not have altered the terms of letter dated 17.4.95 extending the tenure of deputation beyond one year. It is also submitted

that in the case of Indian Troops deployed in similar UN Missions at Somalia and Rwanda the period of deputation was initially one year and six months respectively but the Indian Troops from both the places returned after 14 months.

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7. The respondents on the other hand stated that the OA is without jurisdiction as the provisions of the Administrative Tribunals Act, 1985 shall not apply to any member of the armed forces. During the period of deputation to Angola the applicant was given the rank of a Major of the India Army vide Govt. of India, Ministry of Defence, letter dated 25.4.1999. It is also mentioned that the applicant had admitted that he was part of the Indian Troops Contingent.

8. Shri Arif, learned counsel for the respondents stated that the UN has restricted the payment of the Army personnel only for the period of arrival and departure in the mission area. The transit period has not been taken into account. Since this is a UN operation and the UN has taken the responsibility of making the payment, the restriction imposed by them is final and the Government of India cannot enlarge the scope of UN commitment. With regard to UN's INMARSAT Mission the telephones were unauthorizedly used by the members of the Indian contingent for making private calls and the UN authority raised a bill of \$ 9,136 on this account. The Army Headquarters had made attempts to identify the personnel. Since it was not physically possible

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they had decided to recover the amount at a uniform rate from each of the officers including various detachment commanders.

9. I have carefully considered the submissions. As far as jurisdiction is concerned, the applicant has placed before me the decision of the Supreme Court in the case of Major M.R. Penghal Vs. Union of India and others, 1998 (3) ATC 372. In that case the appellant after clearing the test was appointed as a Clerk in the Army Postal Service. He was promoted there to various higher ranks. However, the tenure in the Army was a temporary commission. This tenure ended and he was repatriated to the Postal Department. The Supreme Court ruled that the appellant cannot be said to be an army personnel. He is only an employee of the Postal Department and the CAT has jurisdiction to entertain the application filed by him. The reason given was that the appellant in that case was only given a temporary commission and he worked as such till the date of his relinquishment. He was not a member of the armed forces and he continued to work as a civilian on deputation to the Army Postal Service. The appellant in that case has a lien with the Post & Telegraphs Department and with that lien he worked on deputation in the Indian Army Postal Service.

10. The facts of the case cited are similar to the facts in the case before me. The applicant belonging to the Defence Accounts Service had gone to the UN on short term deputation. It was a temporary

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assignment and it was only for the period of deputation that he was to be treated as a Major and it was only for a specific purpose that he had to abide by the discipline of the Army. Otherwise he had a lien in his service and the moment the term expired he was to be repatriated back. The applicant also cannot be equated with that of a soldier in the sense that the soldiers get a fixed amount of \$ 988 per month whereas civilians get \$ 2190. This also shows that the applicant was treated as a civilian and his terms and conditions of deputation are different from that of an army officer. Under these circumstances the decision of the Supreme Court is fully applicable to the facts of the case and accordingly I hold that this Tribunal has jurisdiction to adjudicate the issue in the present OA.

11. I will next consider the simple relief with regard to recovery on account of misuse of telephones. The respondents should have examined the explanation of the applicant. A recovery at a uniform rate may be the easy way out but an innocent person cannot be saddled with a monetary liability when he is absolutely innocent. The applicant was hundreds of miles away from the telephone installation and it was not accessible to him. That apart the instrument was in the control of the Army personnel who monitored its use in a rigorous manner. There is a register for the purpose which contains details of the calls made and the names of the persons who called on the telephone. Without

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reference to the record and without examining individual's explanation the Army should not have enforced recovery at a uniform rate. Recovery from the applicant is arbitrary and illegal. The applicant wins on this count.

12. With regard to deduction of \$ 70.65 for 9.8.1996 on account of transit period, in my view it is also improper. The applicant's deputation period according to the terms of condition of the contract dated 21.9.1994 commences from the date of departure and concludes on the date he arrives in India after expiry of the deputation tenure. I have not seen any modification in the terms of this contract to justify a different treatment from those accorded to the earlier approvals given for Somalia and Rwanda. Further a tour is defined and in conformity with that definition allowances are paid. The applicant is an employee of the Indian Government and not of the UN. He was temporarily on deputation to the UN. It is quite likely that the UN might not be able to pay the full amount of remuneration or allowances. That does not in any way diminish the liability of the Indian Government to pay the agreed amount to its own employees. The applicant had gone to the UN Mission on orders of the Indian Government. The UN is only an agency. The applicant has no legal remedy to recover from the UN any deficiency in his allowances but there is an enforceable contract between him and the Indian Government under which he had gone to the UN on deputation. Therefore, the argument of the counsel for the respondents that payment was

restricted because the UN did not subsidize fully is not an acceptable argument. I have not found any material to distinguish the present assignment with UN Missions in Somalia and Rwanda and, therefore, there is no justification to refuse Overseas Allowance on the date of transit.

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13. With regard to interest claimed by the applicant I hold that no case has been made out for the same. Interest is payable only for an unjust deprivation of a legal due and that too for some flagrant administrative lapse. From the material produced before me I do not think there is any such lapse. The delay has been explained and in my view more or less satisfactorily. The claim of interest is, therefore, disallowed.

14. In the result the OA is partly allowed. The respondents are directed to remit back to the applicant the recovery on account of alleged misuse of telephone and the deduction on account of Overseas Allowance on transit period.

*N. Sahu*  
(N. Sahu)  
Member (Admin)

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