

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-3/97

New Delhi this the 10th day of August, 1998.

Hon'ble Sh. S.P. Biswas, Member(A)

Shri R.L. Behal,
S/o Sh. S.L. Behal,
RZ-1114A, Street No.9,
Sadh Nagar, Palam Colony,
New Delhi-45.

.... Applicant

(Applicant in Person)

versus

1. Union of India,
through Secretary to the
Govt. of India, Ministry
of Welfare, Shastri Bhawan,
New Delhi-1.
2. Secretary to the Govt. of India,
Dept. of Expenditure,
Ministry of Finance,
North Block,
New Delhi-11.

.... Respondents.

(through Sh. KCD Gangwani, advocate)

ORDER

Hon'ble Sh. S.P. Biswas, Member(A)

Applicant, working as Private Secretary in the Ministry of Welfare, is aggrieved by the order dated 4.10.96, by which his claims for reimbursement of actual conveyance hire charges alleged to have been incurred by him for going to his residence during odd hours or attending office on holidays as per orders of his superiors have been rejected by the Ministry of Finance, conveyed through DDO/Ministry of Welfare. Consequently, he is seeking relief in terms of directions to respondents to reimburse the actual cost of hiring of conveyance incurred in connection with going to the residence after performing

sd

(2)

official duties till odd hours; and reimburse actual cost of hiring of conveyance incurred in connection with coming to office and going back to the residence after performing official duties on Saturdays/Sundays/Holidays till date.

2. Heard at length the applicant who appeared in person and the learned counsel for the respondents and perused the materials available on record.

3. Briefly stated, the case of the applicant is that since August 1994 he had been working with senior officers like Additional Secretaries or Joint Secretaries, on whose verbal instructions, he had to work on several occasions till late in the night and reach his residence at odd hours or to come to office on closed holidays on different occasions and on this account he had to incur a considerable amount ^{of expenditure} towards hire of conveyance. When he preferred bills in this regard under SR 89, it was rejected informing him that he is entitled to Rs.150/- only per month as per DFPR, 1978. His contention is that the amended DFPR of November, 1988 permits reimbursement of actual conveyance hire charges for such purpose, whereas it is silent about the limit of 8 Kms. from place of duty. He further submits that his house is located 22 Kms. from office and that had he not been called to come to office on holidays or detained in office till odd hours, he would not have spent that very amount on conveyance hire but would have utilised public transport. Besides claiming protection under principles of natural justice, the applicant seeks to justify his claim in terms of law laid down by Apex Court in the case of Union of India Vs. K.P. Joseph (1973(1) SCC 194). He further

(3)

argues that his claim is covered under SR 89 but without the "Marginal Notes". As regards such notes, he asserts that those need not be relied upon while interpreting the law in SR 89. Drawing support from the judgements of the Apex Court in case of N. Bysack vs. S.S. Halder, the Apex Court in case of S.S. Khan & Ors. vs. State of Andhra Pradesh (AIR 1963 A.P. 314 (Vol. 50C-90)), the applicant argued that "Marginal Notes can afford little guidance to the construction of an enactment."

4. While respondents do admit the claim of the applicant that the latter was orally asked by the Additional/Joint Secretaries concerned to work in late office hours and also to attend offices on some closed holidays but they oppose the prayer for reimbursement of actual hire charges for conveyance on the ground that SR 89 relates to entitlement for local journeys within 8 Kms. of hrs. for which no TA is admissible and that SR 89 is under DFPR 1978, which restricts reimbursement of conveyance hire charges to the maximum of Rs. 150 per month.

5. The basic issue that falls for determination is whether applicant's claim is justifiable in eyes of law?

6. I shall now revert to the position of law on the subject.

D
—

(A)

SR 89 with the marginal notes reads as under:-

"S.R. 89. A competent authority may, by general or special order, permit any Government servant or class of Government servants to draw the actual cost of hiring a conveyance on a journey for which no travelling allowance is admissible under these rules.

Note 1- Reimbursement to Government servants of the cost of hiring conveyance on journeys within a radius of 8 kilometres, for which no travelling allowance is admissible under these rules, is regulated under the provisions of Delegation of Financial Powers Rules, 1978."

SR 89 relates to entitlement for local journeys within 8 Kms. of Hqrs. for which no TA is admissible. It is, however, to be read with Notes I and II below SR 89 which lay down that reimbursement of cost of hiring of conveyance on journeys within a radius of 8 Kms. will be regulated under Delegation of Financial Power Rules, 1978. The provisions of DFPRs in this regard, are reproduced as GOI orders below SR 89. These also cover journeys without changing of temporary duty point e.g. journeys performed between residence and office and vice versa where a Government servant is called to duty between 8 p.m. and 6.00 a.m. or is detained in office beyond 8 p.m. as in the case in the present application. General Note 6(i) of Annexure to Schedule V, Item No.3 relating to Conveyance hire of the Delegation of Financial Power Rules, 1978, restrict reimbursement of conveyance hire to Rs. 150/- p.m. in such case.

g
P

(15)

Government of India decision below General Notes 6(v) against item 3 of Annexure to Schedule V of DFPRs, has clarified that in normal circumstances, the reimbursement of conveyance hire should not generally exceed the fare of public conveyance.

7. Applicant's claim has to be examined in the background of above legal position.

I find applicant has challenged the Head ~~or~~ or Marginal Notes to SR 89 but without any legal justifications to invalidate ~~them~~. Merely saying that they run contrary to the spirit of the rule is not enough to challenge the vires of an enactment. If applicant's arguments are to be accepted, then actual hire charges have to be reimbursed irrespective of any distance, what to speak of 22 Kms. Surely, that is not the intention of the law. The marginal notes or Head Notes do have a nexus with the objectives intended to be served. In none of the case laws cited by the applicant, their Lordships have advised that these notes are to be ignored. Such notes carry importance for harmonious interpretation of law. Presuming that public transport is not available after 8 P.M. in the night but what about availability of public transport in the day time on holidays. The case law of K.P. Joseph (supra) cited by the applicant has no relevance with the facts and circumstances of the present case. Applicant's representation dated 11.8.95 has not been annexed. This Tribunal is not aware whether even applicant's claims have been rejected by Finance/ though Head of the Controlling Department had given administrative approval to those claims. These reasons

dp

(b)

are to be made known to the Tribunal before it could exercise judicial review of administrative orders. If a Government servant is called to duty between 8 p.m. and 6 a.m. or is detained in office beyond 8 p.m. and has to return home between 8 p.m. and 6 a.m. when ordinary means of conveyance are not available, conveyance hire may be reimbursed to him provided he is not in receipt of any remuneration for prolonged detention in office and is not in possession of his own conveyance or is not able to use his conveyance and subject also to the condition that a certificate from the Head of Department in the case of a Gazetted Officer and Head of Office in the case of non-gazetted Government servant, is forthcoming to the effect that the officer has to be called/detained after 8 p.m. in the interest of public service. The applicant has not produced all the necessary details/documents required for adjudication of such issues.

8. Under the aforesaid circumstances, I am not in a position to exercise the discretionary jurisdiction available to this Tribunal under Article 226 of the Constitution and provide relief in matters unsubstantiated. The application, therefore, fails in terms of law and grounds taken by the applicant.

9. Realities, however, cannot be denied particularly when the official respondent No.1 admit that "he (applicant herein) has been requested by the concerned officers to sit late in the office in connection with the official work on various occasions for which no formal orders were issued by the Ministry. The applicant would, therefore, be eligible for due compensation for the type

D

(X)

of journey undertaken by him as in para 7 aforementioned. Our orders in para 9 aforesaid shall not prevent the respondents from reconsidering the applicant's claims arising not only from August 1994 till the date of filing of this O.A. but also those arising thereafter in the shape of honorarium.

10. Respondent No.1 will be at liberty to take care of such problems taking advantage of FR 46(b). Under F.R. 46(b), a competent authority may grant or permit a Government servant to receive an honorarium as remuneration for work performed, which is of occasional or intermittent character and either so laborious or of such special merit as to justify a special reward. It is also laid down that except for special reasons, which should be recorded in writing, sanction to the grant of an honorarium should not be given unless the work has been undertaken with the prior consent of the competent authority and its amount has been settled in advance. The sanctioning authorities are required to record in writing that while granting the honorarium, due regard has been paid to the general principles enunciated in FR 11, Instructions under O.M. No. 12(9) E. 11(B)/69 dated 1.12.69 and DOP&T's letter No. 4-4/80 Fin. Co-ordination dated 6.10.1980. FR 46(6) provides the following:-

"Honoraria- The Central Government may grant or permit a Government servant to receive an honorarium as remuneration for work performed which is occasional or intermittent in character and either so laborious or of such special merit as to justify a special reward. Except when special reasons which should be recorded in writing, exist for a departure from this provision, sanction to the grant of acceptance of an honorarium should not be given unless the work has been undertaken

(X)

with the prior consent of the Central Government and its amount has been settled in advance." (8)

Subject to the conditions stipulated in FR 11
and provisions in the ^{two} OMs aforementioned, respondents shall reconsider providing reliefs to the applicant by granting/sanctioning honorarium. This shall be done within a period of six months from the date of receipt of a copy of this order and the applicant shall be kept informed accordingly.

11. The applicant will have the liberty to reagitate the issue strictly on the basis of law, if he is so advised.

The application is disposed of as aforesaid. No costs.

S. P. Biswas
(S.P. Biswas)
Member (A)

/vv/