

(16)

Central Administrative Tribunal
Principal Bench, New Delhi.

1. O.A.No.507 of 1988 ✓
2. O.A.No.1235 of 1989

24th day of November, 1993.

Shri P.T. Thiruvengadam, Member (Ad)

Shri S.C. Anand,
A-1, Greater Kailash Enclave-II,
New Delhi-110048.

Applicant

By: Applicant in person

Versus

1. Director Inspector,
D.G.S. & D.,
234/4, A.J.C. Bose Road,
2nd, M.S. Bldg., Nizam Palace,
Calcutta-700020.

2. Director General,
Supplies & Disposals,
5, Parliament Street,
New Delhi-110001.

Respondents

By Advocate: None *Smt. M.L. Kherwala*

O R D E R

Shri P.T. Thiruvengadam

The issues raised and the relief claimed are identical and hence, a common order is being passed by clubbing the two O.A.s.

2. The applicant was working as Deputy Director of Inspection in the Directorate General of Supplies & Disposals. He was transferred from Bombay to Calcutta by an order dated 23.9.1982, but he did not join at Calcutta. He filed a writ petition in the Bombay High Court against the transfer and the High Court, in their judgement dated 30.1.1986, set aside the transfer. In the meantime, the department proceeded against the applicant by instituting disciplinary proceedings and

Enquiry Officer was appointed on 17.6.1983 to enquire into the charges. The Enquiry Officer issued to the applicant a notice dated 28.6.1983 to attend the preliminary hearing against him on 28.7.1983 in the Office of Chief Controller of Accounts, Bombay. The applicant was available at Bombay at that time. Since the applicant had to attend some court cases on 29.7.1983 at Delhi, it was suggested that another date instead of 28.7.1983 may be fixed for the preliminary hearing at Bombay. The Enquiry Officer, vide his letter dated 8.7.1983, informed the applicant by registered post at his three available addresses that the preliminary hearing would be held on 30.7.1983 at 10.30 a.m. in the Office of the Chief Controller of Accounts, New Delhi. It was stated therein that the change was being made to suit the convenience of the applicant due to his reported visit to New Delhi on 29.7.1983. The letters were received back undelivered.

3. The applicant, however, submitted a letter dated 29.7.1983 to the Chief Controller of Accounts, New Delhi that it was orally learnt by him that the Enquiry had been fixed on 30.7.1983. The applicant further stated that on 30.7.1983, he had to appear in the District Court at Delhi in H.M.A. Case No.626/77. This letter was written by the applicant in his camp at Delhi and was personally delivered to the Enquiry Officer at New Delhi (CCA, New Delhi). In this letter, the applicant requested for adjournment and also suggested that the next date of hearing may be fixed only after the case before the Bombay High Court regarding the validity of transfer was decided.

4. The Enquiry Officer considered the request of the applicant, but decided that he should be present for the preliminary hearing on 1.8.1983 at 3.00 p.m. in Delhi. Accordingly, a letter was addressed to the applicant which was received by him with the following endorsement:-

"(1) Received.

(2) The Court case on 30.07.83 may go over to 01.08.83 and if does not get finished, it shall neither be feasible to attend nor intimate the position. In case the said case finishes, I shall attend."

The applicant attended the Inquiry on 01.08.83 in the office of C.C.A., New Delhi. The applicant was also given photo copies of the documents ^{and} by the Presenting Officer on 01.08.83 on 02.08.83. ¹

5. Subsequently, the applicant submitted a Travelling Allowance claim for attending the enquiry at New Delhi during August, 1983. It is his case that he is entitled for the T.A. claim for the relevant days during 26.7.1983 to 4.8.1983, i.e., the date by which he reached Bombay. The claim was preferred within one year from the date on which it became due and as per Supplementary Rule 194-A, the claim for the Travelling Allowance should be considered as falling due for payment on the date succeeding the date of completion of the journey in respect of which the claim is made and the claim has to be entertained if it is preferred within one year from the date on which it became due. The department in their letter dated 31.5.1985 addressed to the applicant

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mentioned that the claim as above, was received on 6.8.1984 and asked him to furnish the reasons for delay in submission of the claim. The applicant replied on 1.8.1986 that as per the Acknowledgement Card of registered letter by which the T.A. claim was submitted to the department, it was noted that the claim was received by the respondents on 4.8.1984 and not on 6.8.1984. The applicant had also mentioned that it would appear that there was delay in the Office of the respondents at dak perusal stage or other clerical delays and the diary/receipt stamp may have been marked on the next working day. He had also added that since his claim was made in time, if the payment is not made within two months, he would be claiming penal interest from the date of submission of the claim. Since no further communication was received from the respondents, this O.A. was filed in February, 1987, claiming the following reliefs:-

- (a) The respondents be directed to pay the T.A. claim for July-August, 1983.
- (b) The respondents be further directed to pay interest on the above, from 4.8.1984 till the date of payment, at the bank lending rate of 18% p.a. compoundable quarterly.
- (c) They be further directed to pay the costs of the case, including Tribunal Fees, paper work costs and costs of appearance, etc.

6. The main contention of the respondents is that the applicant had proceeded to New Delhi to attend to his own personal matters. He was not summoned at Delhi. The enquiry was initially proposed to be held

in Bombay. When it was known that the applicant had already reached New Delhi, the venue was shifted from Bombay to New Delhi to suit the convenience of the applicant.

7. To the above contention, the applicant referred to Government of India, Ministry of Finance O.M.No. F.5(30)-E.IV(B)/67 dated 20.11.1967, which is reproduced below:-

"A question has arisen regarding the admissibility of travelling allowance to a Government servant against whom an oral enquiry is held under the C.C.S.(C.C.A.) Rules, 1965 and who is required to proceed from one station to another to appear before the officer conducting enquiry. It has been decided that in such cases the Government servant concerned may be allowed T.A. as on tour under S.R. 154.

2. No travelling allowance will, however, be admissible to the charged person if the enquiry is held at a place other than his headquarters expressly at his own request."

Decision 3 under S.R. 153 - Chaudhari's Compilation.

8. The case under discussion is one where a Government servant against whom oral enquiry was held, was already available in a place other than his Headquarters. Even the applicant by his letter dated 29.7.1983, has admitted that he came to know about the enquiry for the next day through oral sources. By 29.7.1983, the applicant was already at Delhi in connection with some other court cases which he was pursuing personally. The department made use of his presence in Delhi and arranged for the preliminary enquiry at Delhi on 1.8.1983 and 2.8.1983. Thus, this is a special case where the

department had not required the charged official to proceed from one station to another for appearing before the officer conducting the enquiry. Equally, the change in headquarters for the purpose of enquiry, had not taken place at the express request of the applicant. The fact, however, remains that the applicant, who was already at Delhi on his own, and who, by his own submission, came to know about the proposed enquiry at New Delhi after reaching there, attended the enquiry on 1.8.1983 and 2.8.1983. Hence, at least from 1.8.1983 till the applicant reached his Headquarters at Bombay on 4.8.1983, he should be deemed to have been at the service of the respondents for the purpose of the enquiry and would be eligible for the admissible allowances including the Travelling Allowance for the journey from New Delhi to Bombay.

9. Regarding the second relief, namely, payment of interest from 4.8.1984 till the date of payment, it is noted that the applicant took abnormal time in replying to the respondents when they had written a letter to him on 31.5.1985 requesting him to furnish reasons for delay in submission of his T.A. claim. The applicant had replied only on 1.8.1986, after a period of 14 months. Hence, the interest @ 12% per annum is allowed only from 1.11.1986, after allowing a period of three months for the department to settle the bill.

10. There will be no direction to the respondents to pay the costs of the case, etc., as prayed by the applicant since the department was under the genuine

impression that the applicant having not been required to proceed from Bombay to New Delhi for attending the enquiry, was not eligible for the T.A. claim.

11. In the facts and circumstances of the case, the OAs are disposed of on the above lines. No costs.

P.T. Thiruvengadam
Member(A)

SLP