

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OJ 1253/1990

Date of decision: 03.04.91.

Shri Jagbandhu Kundu

...Applicant

Vs.

U.O.I. & Others

...Respondents

For the Applicant

...Shri G.K. Aggarwal,
Counsel

For the Respondents

...Shri P.P. Khurana,
Counsel

COURT:

THE HON'BLE MR. P.K. KARTHI, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment? *Yes*
2. To be referred to the Reporters or not? *Ye*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. D.K.
Chakravorty, Administrative Member)

The applicant, who is Chief Resident Engineer, Resident Technical Office, Directorate of Aeronautics, Ministry of Defence, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for a declaration that he is entitled, at his discretion, to travel by air and respondents are bound in law to pay him TA/DA including air-fare as for movement by air-travel, if the duty - points were over 500 Km apart and were not connected by direct train or, if so connected, train travel extended beyond 5.00 p.m. - 8.00 a.m. He has also sought for a direction to the respondents to pay all the past, pending and future bills accordingly and to refund the amount deducted in contravention of the said declaration, with interest at market rate.

2. The facts of the case in brief are as follows. The applicant is in charge of the Resident Technical Office at Hindustan Aeronautics Ltd., Kanpur. The Headquarters is at New Delhi in the office of respondent No.1 (Department of Defence Research Development). His pay is Rs.4500-5700. During the relevant period, he drew basic pay over Rs.4100/- and under Rs.5100/-. His duties involve frequent travel to and from Kanpur, Delhi, Chandigarh, Hyderabad, Bangalore, Cochin, etc., besides looking after the office of RTO at HAL, Kanpur.

3. Entitlement to air travel is regulated by Ministry of Finance OM dated 18.2.1975 which reads as follows:-

" Entitlement for air travel:

In modification of the earlier order, with effect from the 1st November, 1986 travel by air will be permissible on tour or on transfer in the case of officers who are in receipt of pay Rs.5100/- and above at their discretion, provided that officers drawing pay between Rs.4100/- and Rs.5100/- may also travel by air at their discretion, if the distance involved is more than 500 Km. and the journey cannot be performed overnight by a direct train service/direct ship coach service. When train journey can take the officer from one station to another without loss of best part of a working day, the places are deemed to be accessible overnight by rail. Ordinarily, journeys which can be covered between 6 p.m. and 8 a.m. fall under this category. However, the controlling officer can decide such cases at his discretion".

4. The applicant undertook several official journeys to and from Kanpur and Chandigarh, to and from Kanpur and Bangalore, to and from Kanpur and Hyderabad, to and from Kanpur and Cochin, and so on. There is no direct rail link between Kanpur and Bangalore, Chandigarh, Cochin, Daman, Hyderabad. The distance in every case is over

500 Km. The pay drawn by the applicant was/is between Rs.4100-5100. Therefore, as per the Government instructions dated 19.3.1987 (para 4.04 hereinabove), the applicant exercised his discretion and travelled by air to and from Kanpur and Bangalore, Chandigarh, Cochin, Daman, Hyderabad. He bought direct air ticket between the end points and had to change flight at Delhi/Madras. The applicant claimed air fare, etc. but the claims were rejected by respondents 1, 2&3, on the ground that the applicant ought to travel to and from Kanpur and Delhi by railways. The change of flight at Delhi is viewed as splitting of the journey. The respondents have also rejected applicant's claims for hotel/incidentals, saying the same was not reimbursable even if connected flights were delayed and the applicant had to wait for long at intermediate points. While disallowing air fare, respondents paid only 1st class fare by train and not II-ACC by Rajdhani Express, though Govt. instructions/rules permitted II-ACC fare. The case of the respondents is that there was lot of time between connected flights at Delhi/elsewhere and, therefore, the applicant ought to travel by train.

5. The applicant has stated that the difference in mode and class of travel among officers of various grades/appointments, is not based on time taken for travel. A II, I, I-ACC coach would take the same time to reach from station X to station Y, all the coaches being in the same train, yet senior officers are entitled to superior class of coach. That is because in the interest of efficiency of service, it is considered necessary for senior officers

carrying more onerous duties to avoid fatigue and uncertainty while travelling. The exercise of discretion under the Min. Fin. OM dated 19.3.1987 is left to the officer travelling and not conditioned by the question of time taken. The parameters relevant to the exercise of discretion are:-

- (i) The distance involved is over 500 Km
- (ii) The journey cannot be performed by a direct train
- (iii) Even if there were a direct train, it cannot complete the journey between 6 p.m. and 8. a.m.
- (iv) Even if a direct train could complete the journey without loss of best part of a working day, the controlling officer can decide such cases at his discretion.

According to him, once (i) and (ii) satisfied, (iii) and (iv) became irrelevant. If there were a direct train, one can travel by air if the train journey could not be completed between 6 p.m. and 8 a.m. Even if direct train journey could be completed between 6 p.m. and 8. a.m., the controlling officer could decide such cases at his discretion. There is nothing to prevent the officer travelling from utilising his time during halt at intermediate station to perform official duties and his doing so would not constitute two moves. For example, after buying direct air-ticket from Kanpur to Chandigarh, if the applicant want to the HQs at New Delhi during the time he had to wait at Delhi to take the connecting flight to Chandigarh and vice versa, that would not mean his travelling on duty from Kanpur to Delhi and from Delhi to Chandigarh. There was no duty scheduled at Delhi and he was free to spend his stop over at Delhi in any lawful manner he liked to.

6. The respondents had passed applicant's claim for air travel in the past. However, they have started effecting recoveries from applicant's salary, causing severe hardship to him and his family. The disallowing of air-fare and the effecting of recoveries are illegal, arbitrary, based on legally extraneous and obviously misconceived notion that the officer travelling ought to take into account the total time spent in the transit while exercising his discretion in favour of air travel.

7. The contention of the respondents is that for example, if the applicant wanted to go on duty from Kanpur to Bangalore, he ought to travel by train from Kanpur to Delhi and by air from Delhi to Bangalore, because there was an overnight direct train from Kanpur to Delhi while there was a stop over required at Delhi if he bought direct Kanpur-Bangalore air-ticket and travelled by air from Kanpur to Delhi also (the connecting flight was from Delhi to Bangalore, there being no direct air-link between Kanpur & Bangalore). Respondents' suggestion would subject the applicant & others like him, to severe hardship, fatigue and uncertainty in travel. The facility of air travel would be rendered an ordeal harsher than simple train-travel.

8. The applicant has stated that he is to work in his job requiring short-notice travel to places far and near Kanpur for air-craft projects, quite frequently. Any

illegal and arbitrary interference with his discretion to travel by air/train, would be contrary to public interest and will be unwarranted, unjust hardship to him while shouldering highly specialised, arduous, onerous, complex, responsible duties as officer-in-charge of Resident Technical Office at HAL, Kanpur. Likewise, his entitlement to DA/Hotel charges at stop-overs ought not to be interfered with by over reaching the Govt. instructions. He is entitled to cancellation charges for reservations/ bookings.

9. The stand of the respondents is that the claims of TA/DA of the applicant were regulated in accordance with the existing rules on the subject. They have stated that there is direct rail link between Kanpur and Chandigarh and that the time taken between Kanpur and Chandigarh is about 16 hours and the journey can be performed between 12.30 hours and 4.40 a.m., i.e., by not losing best part of the day. The distances between Delhi to Kanpur and Delhi to Chandigarh are 439 Kms and 244 Kms respectively, i.e., less than 500 Kms. Hence the officer is not entitled to travel by air between Delhi and Kanpur and Delhi and Chandigarh by splitting the journeys. According to them, no duty can be performed without the approval of movement order by the Competent Authority. If the officer has performed the duty at Delhi he is not at all entitled to air fare between Delhi and Kanpur and Delhi-Chandigarh as provided in the rules, the distance being less than

500 Kms.

10. We have gone through the records of the case and have considered the rival contentions. The dispute between the parties relates to the entitlement to TA/ DA of the applicant for the period from March, 1983 and and 19.3.1987 May, 1990. The OM dated 18.2.1975 issued by the Ministry of Finance gives a discretion to the officer concerned of the entitled category to travel by air in the circumstances mentioned therein. At the same time, there seems to be force in the contention of the respondents that no duty can be performed without the approval of Movement order by the Competent Authority. There is, however, nothing on record to indicate that the respondents informed the applicant at any time during the relevant period that the amounts of his claims sought to be disallowed now were not according to his entitlement and the applicant conducted the journeys in question by ignoring the same. The applicant undertook the journeys in question in bonafide belief that the claims preferred by him were in accordance with the relevant instructions. In the facts and circumstances, we are of the view that the proposed recovery from him on account of alleged overpayment towards TA/DA is unfair and unjust and cannot be sustained.

11. As for the future, we are of the view that it will be open to the respondents to prescribe in the relevant Movement orders the restrictions in regard to the type of ✓ journey between two travel points and the applicant cannot

ignore the same on the plea that he has discretion in this regard.

12. In the light of the foregoing, the application is partly allowed to the extent that respondents shall not effect any recovery from the TA/DA claims preferred by the applicant for the period from 22.3.1988 to 22.5.1990 ^{on this count}. The respondents would, however, be at liberty to stipulate in the Movement order to be issued by them, the mode of travel between two points and the applicant will be bound to follow the same.

There will be no order as to costs.

D.K. Chakraborty - 574/91
(D.K. CHAKRAVORTY)

MEMBER (A)

P.K. Karthik - 574/91
(P.K. KARTIK)
VICE CHAIRMAN (J)