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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 460/90

New Delhi this 1st day of January 1994

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)

Shri Virender Prasad,
S/o Shri Chhedi Prasad,
R/o C-290 New Seema Puri,
Shahdara,
Delhi-110 032.

... Applicant

(By Advocate Shri B.S. Charya)

Vs.

Employees State Insurance Corporation,
Kotla Road, New Delhi through its
Director General

Union of India through
the Secretary,
Ministry of Finance,
Dept. of Expenditure,
North Block,
New Delhi-110 001.

... Respondents

(By Advocate G.R. Nayyar,)

ORDER (ORAL)

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant has earlier filed Original Application No. 977/88 contending that he was employed as a Peon in the Employees State Insurance Hospital, Jhilmil, Shahdara and he had to work for more than six hours for government work for delivery of Dak and purchase of medicines and so he be allowed daily allowance as has been allowed to other categories of the Government employees. His original application was disposed of by the Order passed by the Principal Bench on 22.11.1988 with the direction that the government may consider and examine the matter for award of daily allowance to Group 'D' employees or a Peon or a messenger. There are extent rules of payment of daily allowance for Group 'A', 'B' and 'C' employees. The respondents have, therefore, in

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pursuance of the directions of the Tribunal and by the impugned order, the applicant has been informed that the matter has been considered by the Ministry of Finance (Department of Expenditure) and there is no possibility of making any change in the rules. The rule for payment of daily allowance to Group 'D' employees have been reviewed but it has been decided that status quo should continue. In the application the relief claimed by the applicant is that the respondents have considered the matter but did not give any reason as to why they didnotconsider it equitable and just to review the rules regarding payment of daily allowance to Group 'D' employees and this decision be held to be wholly void, arbitrary and violative of Article 14 of the Constitution of India.

2. A notice was issued to the respondents who filed the reply and opposed the grant of the relief prayed for annexing a copy of the earlier judgement of the O.A.No. 977/88. It is said that the application was barred by the Principal of res judicata. There is no fresh issue involved in the matter. Under Regulation 7(5) of the ESIC (Staff and Conditions of service) Ruqulations 1959, the Corporation respondents is bound to follow the T.A. Rules and orders issued thereunder by the Government of India for the corresponding categories of the Central Government servants. It is further stated that a joint petition was already filed by the applicant for non compliance with the direction given in the O.A. No. 977/88 and that too has been dismissed. The applicant has no case. The applicant has also filed rejoinder reiterating the facts already averred in the O.A.

3. The applicant has filed a MP No. 2153/93 in July 1993 praying that Ministry of Finance (Dept. of Expenditure) be also impleaded as a party. However, UOI is also a respondent and Ministry of Finance is not necessary party nor a proper party. M.P. therefore is rejected.

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4. The case was called in the pre-lunch session and Shri G.R. Nayyar appeared for the respondents and stated that he has appeared in this case for about 16 times but the hearing has been adjourned. He is not free after lunch therefore it may be heard. The case was also listed yesterday and since morning till rising of the court in the afternoon, the counsel for the applicant was waiting but he could not spare himself so the learned counsel for the respondents have been heard today in presence of the applicant in the pre-lunch session.

5. The learned counsel for the applicant has raised the issue on FR 71 which lays down that daily allowance may not be drawn for any day on which the government servant does not reach a point outside a radius of 8 kms from the duty point. The matter has been considered in the earlier decision referred to above in accordance with the Govt. of India's decision No. 4. Para 2 of the decision lays down that when a Group 'D' Government servant who travels by bus/tram for taking dak to offices situated beyond a radius of eight kilometres from the headquarters and returns on the same day, no travelling of daily allowance should be paid. The Government servant may however be reimbursed actual bus/tram fare for the journeys in question. The issue cannot be raised in the present application as it is barred by the decision taken in the earlier D.A. filed by the applicant himself, and analogy on the principles of res judicata. The challenge in the present case is also regarding the decision arrived at by the Union of India and the direction of the Tribunal issued in its judgement D.A. No. 977/88. Can the Tribunal seek as an appellate authority to scrutinise the justification of that conclusion has already settled by the Hon'ble

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Supreme Court in the catena of decisions. The court/Tribunal has not to interfere in financial matters which have a constraint on the Union of India. The challenge is not to any particular rule or administrative instructions but the prayer is that the respondents should consider granting of daily allowance to Group 'D' employees who had to go out for work travelling beyond 8 kms and in that event they are not subsidised in the daily allowance which is being paid to other categories of Group 'B', 'C' & 'A' employees of Union of India. The Government in its wisdom did not equate the Group 'D' employees for this particular relief with other high categories of employees. The learned counsel Mr. Charya wants reasons for their decision in this regard. The Tribunal cannot direct the respondents to give reasons in an order which is not ^{of} a quasi-judicial nature. It is purely an administrative policy matter not only concerning the applicant but a group in itself. These service rules are in force for a considerable time. When the applicant joined the service he undertook to be governed by the service rules. In this fact and circumstance besides the present application is not maintainable because of the decision of the earlier original application but also on merit the applicant has no case.

6. The applicant who joined as Peon has since been promoted as LDC now is a group 'C' employee. The applicant appears to be a weak hearted person and wanted to draw sympathy which was fully extended to him but the magnanimity and mercy ^{is} has its own limit. The present application, therefore dismissed devoid of merit, leaving the parties to bear their own costs.



(J.P. Sharma)
Member (J)