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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No.43 of 1986 (T)

Union of India Applicant

Versus

Ram Rup Shukla Respondent.

Present : 1. S.Zaheer Hasan, V.C.(J)

2. Ajay Johri, Member (A)

Judgement delivered by Hon. Ajay Johri, Member (A)

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This is a Civil Appeal No. 128 of 1983 Union of India Versus R.R. Shukla, against the judgement and decree dated 3.5.83 passed by the Munsif (City) Bareilly, received on transfer from the Court of District Judge, Bareilly under Section 29 of the Administrative Tribunals Act XIII of 1985. The grounds of appeal are that the suit was time barred, that the plaintiff respondent did not perform any travelling duties during the period in question and was, therefore, not entitled to any Consolidated Travelling Allowance as well as the National Holidays Allowance, both of which have been decreed in suit No. 265 of 1980 by the Munsif (City) Bareilly. On his reinstatement the period of removal has already been treated as spent on duty by him for which Pay & Allowances have been paid and he is due nothing more.

2. The plaintiff respondent's case is that he was working as a T.T.E. under Divisional Superintendent Izatnagar in the year 1974. On 20.5.74 he was illegally removed from service. He made representations and ultimately filed a writ petition in the High Court of Judicature at Allahabad No. 3845 of 1975. While the

writ petition was pending the defendants revoked their removal order dated 20.5.74 and reinstated the plaintiff respondent vide their order dated 14.4.77. The period from 20.5.74 to 14.4.77 both days inclusive was regularised as period spent on duty. Though he has been paid pay and allowances for this period, he was not paid the Consolidated Travelling Allowance and the National Holidays Allowance to which he was entitled for the said period.

3. On the subject of the case being barred by time the matter has been discussed in detail by the learned Munsif in his judgement of 3.5.83 and we find no reason to disagree with him on this issue.

4. The learned Munsif in his judgement, has dwelt at length on the subject of admissibility of the Consolidated Travelling Allowance and National Holidays Allowance to the plaintiff respondent. He has not accepted the plea put forward by the defendant appellant that the plaintiff respondent was not physically present during the disputed period which has subsequently been treated as period spent on duty. He has held that since the plaintiff respondent's duties were of a touring nature, he was entitled to Consolidated Travelling Allowance. According to him this was more so in view of the mental agony, physical discomfort and financial difficulties that the plaintiff respondent had to undergo during the period he was kept out of service. This allowance is due to an employee even if he is on casual leave or on rest. In the case of the plaintiff respondent the period has been treated as spent on duty. He was not given any show cause

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notice as to why the Consolidated Travelling Allowance was not being paid except the letter dated 24.10.77 saying that he will not be paid the same. The letter dated 24.10.77 was thus not in accordance with the law and has no effect. The learned Munsif has further said that had the plaintiff respondent been on duty during the said period he would have earned the Consolidated Travelling Allowance and the National Holidays Allowance. It has not been disputed by the defendant appellant that the holidays would have been, without fail, availed of as holidays by the plaintiff respondent. Under the circumstances the National Holidays Allowance also became admissible.

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5. Travelling Allowance is granted to an employee to enable him to meet with the additional expenditure incurred by him in staying outside his HQrs. It is admissible when staff is deputed to perform duty away from his HQrs. The rates of the travelling allowance are revised periodically keeping in view the increase in the cost of living so that the employee does not go out of pocket but they are not considered as a source of profit. Consolidated Travelling Allowance is a permanent monthly travelling allowance and is granted to the staff whose duties require extensive and regular travelling each month. It is in lieu of all other forms ~~of~~ travelling allowance and is permitted to be drawn all the year round whether the employee is away from the HQrs. or not. Staff who do not do the minimum touring duty in a month can only draw daily allowance and not Consolidated Travelling Allowance. This allowance is not admissible when the staff are on leave. The Consolidated Travelling

Allowance is not granted unless the concerned staff has been away from his HQrs. on duty for more than 20 days in a month on an average. This allowance is calculated so as to be approximately equivalent to the travelling allowance admissible under the rules. For staff who go on duty on the basis of a roster it is fixed on the basis of number of days an employee is likely to be out of HQrs. Once fixed it is drawn throughout the year, but it can only be drawn so long as an employee^{3h continues to} performs duties attached to the post and he actually travels. If the staff do not perform the minimum touring in a month he is only entitled to draw daily allowance and not Consolidated Travelling Allowance.

6. National Holidays Allowance is paid to staff who are required to perform duties on the three national holidays i.e. 26th of January, 15th of August and 2nd of October. Another six important holidays are also added to the list. It is admissible even when an employee works for part of a day or if he is on due rest or if he is on journey from his place of work or if he is on periodic rest or after having completed his rest he is awaiting booking on that day.

7. For the payment of these two allowances i.e. the Consolidated Travelling Allowance or the National Holidays Allowance it is essential that the duties are actually performed. The basic thought even on bare reading of the principles laid down for the payment of these allowances is that a person must actually perform the duties to become eligible for payment of these allowances. In the case of the Consolidated Travelling Allowance if the minimum touring

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duty in a month is not performed the employee can only draw the daily allowance and not the Consolidated Travelling Allowance. The learned Munsif has based his arguments on the fact that since the period during which the plaintiff respondent was out of service and which has ultimately been treated as one spent on duty, for no fault of his, the plaintiff respondent was stopped from performing the travelling duties every month. He would have performed these duties as well as attended to work on the National Holidays as it had been admitted by the defendant appellant that the plaintiff respondent would have not necessarily been on leave on the national holidays. We cannot rely and base our conclusions on what would have happened when actually the events did not take place. Could the plaintiff respondent have remained physically fit throughout the whole period ? Could he not fallen ill or met with some mishap resulting in long period of being away from duty? Could he not have some urgent work to do at home on a national holiday and thus excused himself from the duty roster? There can be scores of such possibilities and probabilities. These questions are well nigh difficult to answer as they base themselves on factual positions and actual circumstances of the happenings from day to day. We feel that it will be misconstrued conclusion to say that had the plaintiff respondent been on duty he would have faithfully performed the minimum travelling duty and would have been booked and would have attended to the duties on a national holiday. These allowances are only admissible for duties actually performed and therefore on good materials and valid reasons we are unable to persuade ourselves to agree with the view of the learned Munsif.

8. The plaintiff respondent has relied on Calcutta High Court decision in Civil Appeal No. 72 of 1978 A.J.Vasvani Versus Union of India decided on 25.6.82, S.L.R. 1982 Page 220, Para 158. The relevant para reads :-

" Thus, it is evident that in absence of any specific Rule the Supreme Court held that the person concerned was entitled to all remuneration which he would have earned had he been permitted to work. A specific Rule has been provided in Fundamental Rules, being R.54A(3) ". This para refers to remuneration. Remuneration is a return for the labours put in by a person for performing the duties of his employer. According to financial interpretation remuneration is pay. Thus it is wages only and Consolidated Travelling Allowance and National Holiday Allowance are not a remuneration in the sense in which the word has been used in the relied judgement. Rule 54A(3) is modified ³¹ Rule by 54A(4) to clarify that the payment of allowance under Sub Rule ³ (iii) is subject to all other conditions under which such allowances are admissible. The admissibility of the Consolidated Travelling Allowance is on the basis of an average of 20 days duty to be performed every month and both the allowances in question are to be paid on the basis of work having been actually done. This is not the position in this case.

9. In the result we do not consider that the plaintiff respondent was eligible for the Consolidated Travelling Allowance or the National Holidays Allowance during the disputed period. The appeal is accordingly ³¹ ~~partly~~ allowed and the judgement of the learned Munsif set aside ^{to be} on these points. Parties will bear their own costs.

(S.Zaheer Hasan)
Vice Chairman (J)

(Ajay Johri)
Member (A)

RKM

Dated the 8th Sept., 1986.