

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
JODHPUR

Date of order : 07.05.1997

O.A.No. 326/1996

1. N.K.Khandelwal S/o Late Shri G.R.Khandelwal, R/o 152 Sardarpura, IL-C Road, retired Assistant Commercial Manager, Northern Railway, Jodhpur.
2. Sh.R.K.Kapoor S/o Late Shri Radha Kishan Ji, R/o 2-B, New Pali Road, Opp. Police Station, Vijay Nagar, Jodhpur, retired Senior Divisional Mechanical Engg., Northern Railway, Jodhpur.

..... Applicants

Versus

1. Union of India through General Manager, Northern Railway Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur.
3. Divisional Personnel Officer, Northern Railway, Jodhpur.
4. Divisional Accounts Officer, Northern Railway, Jodhpur.
5. Divisional Audit Officer, Northern Railway, Jodhpur.

..... Respondents

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THE HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

Mr.N.K.Khandelwal

..... For Self and on behalf of
Applicant No.2

Mr.R.K.Soni

..... For Respondents

PER HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER :

The applicants have filed this OA with the prayer that the impugned order Annex.A-1 may be quashed and the relief, which ~~is~~ the facts and circumstances of the case warrant, may be granted.

2. Briefly the facts of the case are that as per the Divisional Audit Officers Inspection Note, a communication Annex.A-2, was sent to the applicants No. 1 and 2 and the

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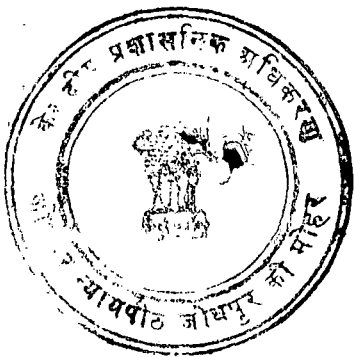
applicants were directed to deposit Rs. 490/- and 1190/- respectively, which were said to have been wrongly paid to them as Daily Allowance for attending supervisory duties in control office without visiting the site of accident / break down. The applicant No. 1 filed representation against the proposed recovery drawing attention of the authorities towards the Rule 1420(1)(ii)(iv) and also to sub rule 3 of the Indian Railway Establishment Code (for short "the Code"). But the representation of the applicant No. 1 was rejected by the respondents vide Annex. A-1. The case of the applicant No. 2 is similarly situated, hence this O.A.

3. The respondents have stated in their reply that the daily allowance was wrongly paid to the applicants and the recovery is being made in terms of Audit Objection. The respondents have further stated that as per the clarification from the Railway Board dated 31.1.1995, the recovery is as per rules. The applicants are not entitled to any relief. The OA deserves to be dismissed.

4. The applicants have filed the rejoinder and reiterated their stand and have further alleged that they have not influenced the authorities to pay them daily allowance which the respondents allege, was wrongly paid to the applicants. The applicants have also stated that the daily allowance was granted to them perfectly according to the rules and the same has since been spent by the applicants therefore, as per the pronouncements of various Tribunals and the Hon'ble Supreme Court, the same cannot now be recovered. The instructions issued by the Railway Board and further circulated by the General Manager and the Divisional Railway Manager do not apply in the instant case and even if, the same is held to be applicable in cases of such claim, the same cannot be made applicable retrospectively. Hence, the applicants are entitled to the relief claimed.

5. I have heard the applicant NO. 1 in person who is also representing applicant NO. 2 as an advocate and also the learned counsel for the respondents and gone through the record.

6. In the instant case, it is an admitted position that both the applicants have not visited the site of break down/



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accident. They were said to have been deputed in the control room for monitoring the progress of break down/ accident from time to time as and when such occasion arose. Therefore, the matter solely depends upon interpretation of rule 1420 which for convenience is quoted as under :-

"1420. Breakdown Allowance-(1) Non-gazetted railway servants employed in running sheds and carriage and wagon depots who are earmarked for attending to breakdown duties and Relief Train Electrical Staff shall be allowed the following concessions :

(i) A breakdown allowance, which will be treated as Compensatory Allowance for all purposes and the payment of which would be subject to a review by the controlling Officer in every case where a railway servant has failed to turn out for break down duty within the stipulated time, at the following rates :-

Provided that the supervisory staff, holding posts in revised scales upto Rs.550-750/1600-2660 except the supervisors in charge of carriage and wagon depot, loco running shed or the electrical relief train, may be granted breakdown allowance at the rates prescribed in this clause;

(ii) Supply of free food, departmentally or otherwise during the period they are engaged in breakdown duties;

(iii) Payment for overtime work in accordance with the normal rules, time taken in travelling to the site of the accident and back shall also be reckoned for payment of overtime;

(iv) Payment of full daily allowance without the stipulation that they should be out of headquarters beyond 8 kilometres for a period exceeding 12 consecutive hours ;

(v) Priority for allotment of quarters, particularly for quarters near the running sheds or carriage and wagon depots, as the case may be.

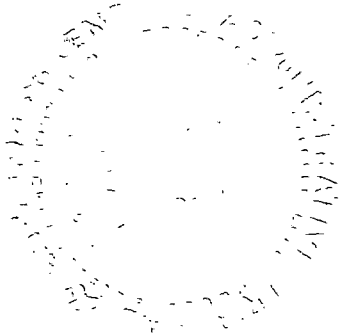
(2) All other non-gazetted staff of all departments who are called out in connection with accidents/breakdown shall be allowed the concessions enumerated in clauses (ii), (iii) and (v) of sub-rule (1) above :

Provided that in the case of permanent way staff, full daily allowance shall be paid irrespective of the restrictions laid down in Rule 1614.

Provided further that the above concessions will also be admissible to the supervisory staff who are not in receipt of the standing breakdown allowance in accordance with the proviso to sub-rule (2) above.

(3) Gazetted staff, who are called out in connection with accidents/breakdown shall be allowed the concessions

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enumerated in clauses (ii) and (iv) of sub-rule (1) above:

Provided that no Cash Compensation in lieu of free food shall be paid to the Gazetted staff.

(4) For the purpose of sub-rules (1), (2) and (3) above, a breakdown may be any of the following, which interrupt normal traffic on running lines :-

(i) Any accident which involves the calling out of a breakdown train or engine with special staff or equipment (including MFD equipment or traffic crane), from the nearest breakdown train depot or shed ;

(ii) A breach or wash-away on the line ;

(iii) Snapping of overhead electric traction lines which involves calling out of tower wagon or breakdown lorry;

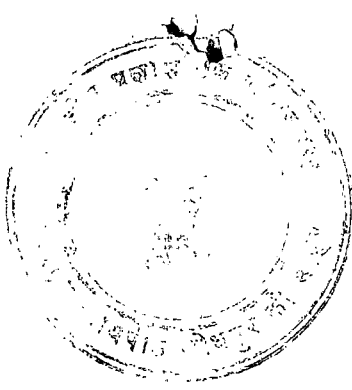
(iv) Damage/bursting of points requiring the attendance of a breakdown/repair/maintenance gang ;

(v) Breakdown of interlocked lifting barriers ;

(vi) Total interruption of telecommunications or of power supply."

7. As narrated above, the applicants monitored and supervised the progress of breakdown/accident while remaining in control room. A copy of the Railway Board's letter No. E(P&A) II/95/DBA/1 dated 31.1.1995 was circulated by the Divisional Railway Manager, Northern Railway, Jodhpur, vide his letter dated 31.5.1995 (Annex.A-8), clearly mentions that neither breakdown allowance nor Travelling Allowance is admissible to the staff working in control office for monitoring the relief operations of the breakdown.

8. As would be clear from Rule 1420 of the Code, there are number of persons who are ear-marked for attending breakdown duties and who are in receipt of breakdown allowances. There are provisions in the Rules to call-out non-gazetted and gazetted staff in connection with breakdown/accidents. Thus, it is borne out that few of the staff members may be deputed on site to attend the breakdown and accidents and few others, may be deputed to attend other duties relating to accidents and breakdown while remaining in the Headquarter. The Railway Board's letter only clarifies the situation that staff members working in control office are not entitled for allowances but the circular does not say that staff members called-out in connection with the accidents to monitor the




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progress and make other arrangements, are not entitled to any allowances. Thus, the circular of the Railway Board dated 31.1.1995 does not apply in the instant case.

9. The working of the control room of the Railways was explained during the arguments. There are permanent staff members who are working in control room in rotation round the clock and in case of emergency other staff members are called-out and deputed in the control room to attend the emergency duties relating to breakdown/accident. Thus, two classes of staff, one permanently posted in control room and the other called-out in connection with accident/breakdown and deputed in control room, are two separate type of staff members for purposes of daily allowance. The Railway Board's letter dated 31.1.1995 applies only to permanent staff members posted in the control office and not to the members who were specifically called-out in connection with accident and breakdown to attend duties in the control room. This is an admitted position that these two applicants were not the permanent staff members of the control room. They were called-out in connection with accident/breakdown as and when their services were needed. Thus, they were paid daily allowance as per the provisions contained in clause (iv) of sub rule (1) of Rule 1420 of the Code during the period starting from June/July 1994 to March 1995. Therefore, it cannot be said that the applicants were wrongly paid the daily allowance for attending the duties relating to breakdown/accident in control room only.



10. If for the argument sake, if it is taken that the daily allowance was wrongly paid to the applicants, then also the amount being small and has since been spent by the applicants, the same cannot be ordered to be recovered from their pension in view of the pronouncement of the Hon'ble Supreme Court reported in JT 1995 (1) SC 24, Sahib Ram Vs. State of Haryana and Others. The Railway Board's Circular dated 31.1.1995, circulated by the Divisional Railway Manager, vide its letter dated 31.5.1995 even if interpreted to be applicable in the instant case, cannot be given retrospective effect for purposes of recovery. Such administrative instructions cannot be given any retrospective operation in view of the pronouncement of the Hon'ble Supreme Court reported in AIR 1981 SC 783, Accountant General and Ors. Vs. S. Dorai Swamy and Ors.

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11. In view of the above discussion, the O.A. of the applicants deserves to be accepted and the applicants are entitled for the relief prayed for.

12. The O.A. is accepted. The order of the Respondents Annex.A-1, is hereby quashed. The respondents are directed not to recover the amount as indicated in Annex.A-1 from the applicants.

13. Parties are left to bear their own costs.


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(A.K.MISRA)
Judicial Member

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1 (H.R.) K.B.
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3 G.B.

Part II and III destroyed
in my presence on 2/5/03
under the supervision of
section officer () as per
order dated 4/2/03

Section officer (Record)
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