

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

Date of order : 28.10.99

O.A. No. 115/98

Labhsingh son of Shri Bachhan Singh by caste Sikh aged about 59 years, Ex.Chief Controller of Trains, resident of C/o. Shri Bhoop Singh, Head Clerk, Quarter No. 63, Near Railway Dispensary, Railway Colony, Bikaner.

... Applicant.

v e r s u s

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

... Respondents.

Mr. N.K. Khandelwal, Counsel for the applicant.

Mr. S.S. Vyas, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

(O R D E R)

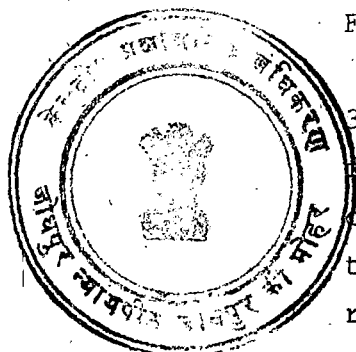
(Per Hon'ble Mr. Gopal Singh)

Applicant, Labhsingh, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned order dated 3.4.1997 (Annexure A/1) and dated 28.6.96 (Annexure A/2). The respondents vide Annexure A/1 had given show cause notice to the applicant as to why the amount of Rs. 22857/- paid to the applicant as

Labhsingh

travelling allowance in connection with break down duty be not recovered, as the same has been paid erroneously.

2. Applicant's case is that while working on the post of Chief Controller of Trains, the applicant retired on superannuation on 30.6.1996. The respondents vide their letter dated 3.4.1997 (Annexure A/1) informed the applicant that the travelling allowance from June, 1993 to December, 1995, amounting to Rs. 22857/- has erroneously been paid to him and is proposed to be recovered from his DCRG amount. Accordingly, the above mentioned amount has been withheld by the respondents from the DCRG amount. The applicant submitted a representation against this recovery vide his letter dated 6.4.97 (Annexure A/3), but the same was rejected vide respondent's letter dated 1.8.97 (Annexure A/4). It is the contention of the applicant that the travelling allowance for the break down duty is permissible under Railway Board's letter dated 21.11.1978 (Annexure A/6) and letter dated 13.8.79 (Annexure A/7). Feeling aggrieved, the applicant has approached this Tribunal.



3. Notices were issued to the respondents and they have filed their reply. It is stated by the respondents that the overpayment erroneously made to the applicant was detected by the audit party and the applicant was informed of the same vide respondents' letter dated 3.4.97 (Annexure A/1). It was stated therein that the travelling allowance was not admissible to the control room staff who attends the control office during breakdown as per the instructions of the Railway Board. It is also stated by the respondents that the representation dated 6.4.97 of the applicant was duly considered in terms of Railway Board's circular circulated vide P.S. No. 10976/95 (Annexure R/1), and rejected. Since the amount has been erroneously paid to the applicant, there is no illegality in recovering the same from the applicant.

4. We have heard the learned counsel for the parties and perused the records of the case.

5. It is the stand of the respondents that the travelling allowance for break down duty is not admissible to the staff working in the control office. In this connection, it would be

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relevant to go through Railway Board's circulars dated 21.11.78 and 13.8.79, which are extracted below:-

"Copy of Railway Board's letter dated 21.11.78.

Reference Railway Ministry's letter No. E(P&A)II-72 BDA-2 dated 26.11.1973 on the above subject. The Railway Ministry have had under consideration the question of regulating the conditions governing the grant of full days DA/TA to the staff attending the breakdown duties under Rule 430-RI. They have, after careful examination, decided in supersession of the clarification issued vide Board's letter No. E(P&A)II-74 BDA-1 dated 18-19.7. and clarifications given to individual Railway Administrations,

(i) full day's DA/TA should be allowed to all staff attending to break down duties, irrespective of whether they are earmarked for breakdown duties or not, without the stipulation that they should be out of headquarter beyond 8 Kms. for a period exceeding 12 consecutive hours i.e., this concession will be admissible to staff covered by both the sub-rules of Rule 430-RI.

(ii) full DA/TA should also be allowed even when the staff attends to break down duties at their place of work Headquarters Station Limits.

2. The above has the sanction of the President and issues with the concurrence of the Finance Directorate of the Ministry of Railways.

3. Past cases dealt with otherwise need not be reopened."

"Copy of Railway Board's letter dated 13.8.79.

The Railway Ministry have had under consideration the question of regulating the conditions governing the grant of special concessions to the staff attending to break down duties as laid down in Rule 430-RI. The RB have now in supersession of all the previous instructions/clarifications issued vide marginally noted letters, decided as under :-

i) E(P&A)II-72/ BDA-2 dated 26.11.73 i) Full day's DA/TA should be allowed to all staff attending to breakdown irrespective of whether they are earmarked for breakdown duties or not, without the stipulation that they should be out of headquarters beyond 8 Kms. for a period exceeding 12 consecutive hours, i.e., this concession will be admissible to staff covered by both the sub-rules of Rule 430-RI,

ii) E(P&A)II-72/ BDA-2 (Dup) dt. 27.9.77 ii) full day's DA/TA should also be allowed even when the staff attend

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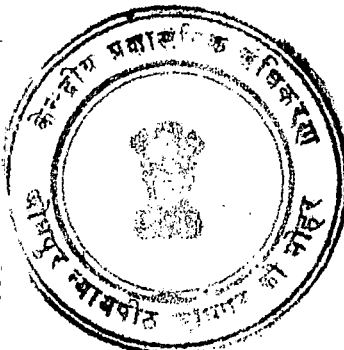


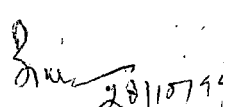
to breakdown duties at their place of work/Headquarters/Station limits."

6. It is very clear from the above circulars that full DA/TA is admissible even when the staff attend to breakdown duties at their place of work/Headquarters/Station limits and perhaps, under these instructions TA/DA was allowed all along to the staff stationed in control office for breakdown duties. The respondents have submitted that in terms of clarification issued by the Railway Board vide their letter dated 16th February, 1995 (PS No. 10977/95), TA/DA for the staff working in control office for monitoring the relief operations of the breakdown is not admissible. It appears strange even after this clarification by the Railway Board, the respondents continued to pay TA/DA for breakdown duties to the staff posted in control rooms. It implies that the clarification issued by the Railway Board was not circulated for the guidelines of the staff. It has been admitted by the respondents that the irregularity came to notice only after the audit party raised the objections in this regard in the year 1996. It is worthwhile to mention that the applicant had already retired on 30.6.96. It would be seen that the payment of TA/DA for the breakdown duty has been made to the applicant without any misrepresentation on his part and therefore, the respondents cannot recover this amount after the retirement of the applicant. We are, therefore, of the opinion that the application deserves to be allowed.

7. The O.A. is accordingly allowed and the respondents are directed not to recover the amount of Rs. 22857/- paid to the applicant on account of breakdown duty and accordingly the said amount withheld from the gratuity of the applicant should be released forthwith with interest @ 12% per annum compounding annually for the period from 1.7.96 to the date of payment.

8. Parties are left to bear their own costs.


(GOPAL SINGH)
Adm. Member


(A.K. MISRA)
Judl. Member

cvr.