

क.प्र.श. (प्रक्रिया) नियमावली के विषय 72 के अन्तर्गत नि: शुल्क पात्र
**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

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O. A.NOs. 87 AND 88 OF 2008

Date of Order : 11.02. 2010.

CORAM:

HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER

- 1- S.S.Gahlawat S/o Shri H.S. Gahlawat aged about 49 years at present employed on the post of Chief Controlelr at Jodhpur Railway Station, NWR.
- 2- Devi Lal Parihar S/o Shri H.R. Parihar aged about 54 years, at present employed on the post of Sr. Section Engineer (Elect) Power, at Jodhpur Railway Station, NWR.
- 3- H.S. Pandey S/o Shri O.D. Pandey, aged about 40 years, Jodhpur, at present employed on the post of Section Engineer in Carriage and Wagon Depot, Jodhpur, NWR.

C/o Sh. S.S.Gahlawat, Qutr.No.3099, Railway DS Colony, Jodhpur.

.....Applicants in OA 87/2008.

Mal Chand Meena S/o Shri Jaganath Pd. Meena aged about 52 years, R/o L-77, Medical Railway Colony, Jodhpur, at present employed on the post of Chief Loco Inspector in the office of DRM Jodhpur, NWR.

.....Applicant in OA 88/2008.

For Applicant Mr. J.K.Mishra, Advocate.

VERSUS

**COMPARED &
CHECKED**



- 1- Union of India through General Manager, North Western Railway Jaipur, Ganpati Nagar, Opp. Railway Hospital, Hasanpura Road, Jaipur.
- 2- Sr. Divisional Personnel Officer, North Western Railway (Erstwhile Northern Railway) Jodhpur Division, Jodhpur.
- 3- General Manager, Northern Railway, Hqrs. Office, Baroda House, New Delhi.

...Respondents.

For Respondents Mr. Manoj Bhandari, Advocate.

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**ORDER
(BY THE COURT)**

Both these Applications arises out of the common order and the relief claimed is also the same, hence, both these OAs

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are being disposed of by this common order and the case of S.S. Gahlawat and two Ors., is taken as a leading case.

2- The applicants are Railway employees who actuated by patriotic favour joined the Territorial Army. The Territorial Army is a Para Military Force of India which is muscled by people drawn by various walk of life. The requirement of the security forces and their patriotic favour had been recognized by the State and its Agency in many a way and one such methodology was to give some effectual benefits to them in acknowledgement of their duties and the function which they have voluntarily shouldered. The applicants were sent on embodiment duties and they were embodied for Operation 'Parakram' vide letter dated 9.1.2002 which is Annex.A/2. The Railway Board was pleased to issue detailed orders for payment of daily allowance while it was advised that 1101 Rly. Engrs. Regt. (TA) Chandigarh is embodied under Rule 33 of the Territorial Army Act Rules, 1948 and the expenditure in this regard is to be borne by the Ministry of Defence. The Railway Board was pleased to issue detailed orders for payment of daily allowance and running allowance during embodiment of Railway TA Units in aid of Civil Power vide letter dated 27.3.1984, a copy of which is produced as Annex. A/3. It has been provided in Clause (ii) that on embodiment duties they are entitled to daily allowance at full rate to which they are entitled by virtue of their appointment on Railways in addition to the authorized rate of 75% Daily Allowance. It appears that the first applicant had received an amount of Rs. 14437/-, the second applicant had received an amount of Rs. 7,740/- and the third applicant had received Rs. 6,431/- on their

dis-embodiment. It appears that there was a proposal in their case that it was thought fit to stop or delay the payment of daily allowance/running allowance till further orders. The applicant would say vide Annex. A/4 dated 6.3.2002, this was cancelled. It would appear that in between payment made to the applicants and some others also were to be paid but in between the stop payment order had also come. Even though, it was cancelled by Annex. A/4 and the applicants were apparently given recovery orders which is produced as Annex. A/1 dated 31.8.2005. Through Annex.A/5, the applicant would contend that the Railway Authorities seems to have been confused with the embodiment of '48' Parade during 2001 and that of Operation "Parakram" 2002. During the period of 2005-06, the recoveries were apparently made but, the applicants took initiative in the matter and found that 663 similarly situated persons were paid their due daily allowance, running allowance etc. by the various Divisions. They found that in Jodhpur about 30 persons were paid such allowance and recovery has been made only from the applicants. This discriminatory attitude and the illegality of recovery from them and the extent of what is legally due to them, had compelled the applicants to approach this Tribunal.

3- The Railways would say that the application is barred by limitation but, this Tribunal vide its order dated 7.5.2008 allowed the MA Nos.47 and 45/2009 and condoned the delay. They would further say that the Railway Board's letter dated 27.3.1984 has been rendered otiose by N.R.HQs letter E/ADMN/46/35/2001(1101) dated 22.4.2002 which had made it clear that staff of TA personnel embodied under Operation

Parakram are not to be paid TA and DA at the enhanced rate. Therefore, they would say that the earlier Railway Board's letter is now superimposed by the Northern Railway's letter which is a letter issued directly by the concerned officer. This of course, the applicant contest as the subordinate office cannot over-ride the superior Board's decision. They would also say that the Jodhpur Division was earlier under the Northern Railway Headquarters which is at Delhi, therefore, they would say that a jurisdictional error has come in the way. The Railways would further say that if at all any irregular payment had been made to any one, it does not mean that same irregularity to be extended to others as well. They would say in Para No. 10 of their reply that this had been referred to Headquarters of the Railway Board by the Northern Railway Headquarters and they have informed those below them that till the Railway Board takes a decision, no payment can be made and any irregularity if already had been committed it cannot be perpetuated. The Railways would say that if at all the Railway Board decides otherwise, they will indeed make payment to the applicant and others.

Therefore, it would appear that the matter is being considered at the level of Railway Board but, yet it has not been seem fit for them to take a decision. The applicant had produced the Annex.A/10 Territorial Army (T.A.) and Home Guard Rules etc., which are produced in Railway Establishment Manual which says that when called for embodiment TA as 200% and 175% respectively will be admissible to officers and non gazetted staff, Shunters / shunting staff will also get 320 km. per day as Running allowance, and other running staff will get 480 km. per

day. This is said to be enhanced and the matter is said to be pending with the Railway Board. Annex. A/11 is a letter issued by the Hon'ble Minister for Railways congratulating the Railwaymen for the Operation Parakram in their chivalry and commitment to the Nation. Annex. A/12 is produced which would show that the amount deducted for the period of 1.1.2002 to 13.3.2002 is to be repaid back to the concerned official. It is also brought to the notice of the Court that it is the Ministry of Defence which is bearing the expenses of such embodiment and now the applicants would say that because of the confusion in the Railways, under the guise of recovery even the amount which has been paid to them normally has not been paid to the applicants. They had pointed-out that Railway being a composite authority, there cannot be any fragmented decision by each Railway Headquarters and each General Manager treating his Railway as his own as the decision making authority. Even though, the matter had been sent to the Railway Board, it would appear that no decision has been taken.

4- I have carefully analysed the situation arising in this matter. The chivalry and the commitment to the Nation executed by the Railway men were commented favourably by the Hon'ble Minister of Railways. The Defence Ministry seems not to have objected to the enhanced rate which is made payable to them under the Territorial Army Rules. The Operation Parakram seems to be a successful operation by the Government and therefore, the reason to deny these benefits to the applicants is not understood especially in view of the fact that all over the country all the other Railway Divisions had paid it at the enhanced rate.

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The respondents would say that it is an irregularity but even if it is an irregularity as it has been paid to 663 persons and denied only to the present applicants, the composite wisdom of all other Railway Administrations either must prevail or otherwise Article 14 will be rendered functionally impotent. Therefore, the applicants are entitled to return of the recovered amount, but it is made clear that this amount will be paid to the applicants like the 663 others and it will be subject to the final decision of the Railway Board. But, in the meanwhile, the respondents are directed to return the recovered amount due to them and in view of the patriotism and the commitment to the Nation which they have executed and that Hon'ble the Railway Minister commented upon their dedication with approval within one month from the date of this order failing which, it will carry an interest at the rate of 12% per annum from the date of such recovery to the date of such payment. A copy of this order may be sent to the Secretary of the Railway Board by the Registrar for him to take such steps as is necessary as the matter relates to an event of 2002 for him to act with expedition and dispatch and in accordance with statutory formations and constitutional provisions of India. The O.A. is thus allowed to the extent as stated above. No order as to costs.

दिनांक १७/१२/१० के आदेशानुसार

मेरी उपर्याप्ति मे दिनांक १२/१०

को आम-प्र० ने यह निम्न गदा।

रामेश्वर महेश्वरी

केन्द्रीय रेलवे न्यायालय

जोधपुर न्यायालय, जोधपुर

CERTIFIED TRUE COPY

Dated 12.2.2010

Sd/-
[Dr. K.B. Suresh]
Judi.Member

NGO M.
केन्द्रीय रेलवे न्यायालय
जोधपुर न्यायालय, जोधपुर
Central Admn. Court of Tribunals
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