

Central Administrative Tribunal
Ernakulam Bench

Date of decision: 18.1.90

Present

Hon'ble Shri N.V. Krishnan, Administrative Member

And

Hon'ble Shri N. Dharmadan, Judicial Member

DAK 562/88 and DA 417/89

(1) DAK 562/88

1. KT Johnny
2. VK Narayanan
3. KT Johny
4. MM George
5. KR Devadas
6. KT Joseph
7. TC Karthikeyan

: Applicants

Vs.

1. The Chief of Naval Staff,
Naval Headquarters,
New Delhi.
2. The Flag Officer Commanding
in-Chief, Southern Naval
Command, Cochin.
3. The Directorate of Installation
Naval Training (DINT),
Naval Base, Cochin-682 004. : Respondents

Mr. M. Girijavallabhan : Counsel for Applicants

Mr. P.V.M. Nambiar, SCGSC: Counsel for Respondents

2. DA 417/89

1. NT Bhaskaran
2. TK Joy
3. MG Radhakrishnan

: Applicants

Vs.

1. The Union of India, rep. by
Secretary, Ministry of
Defence, New Delhi.
2. The Chief of Naval Staff,
Naval Headquarters,
New Delhi.

3. The Flag Officer Commanding in-Chief, Southern Naval Command, Cochin.

4. The Directorate of Installation Naval Training (DINT), Naval Base, Cochin-4. : Respondents

M/s K. Ramakumar and VR Ramachandran : Counsel for Applicants

Mr. P.V.M. Nambiar, SCGSC : Counsel for Respondents

Judgment

Shri NV Krishnan, Administrative Member

These two applications raising similar issues were heard together and accordingly, they are being disposed of by this common judgment. Unless otherwise stated, all references are from OAK 562/88.

2. The applicants in the first case (OAK 562/88) are Draughtsmen borne on an All India Roster and they were transferred by Respondent-1 and posted in the Directorate of Installation, Naval Training, located in the Naval Base, Cochin. (DINT, for short). By the Annexure-G order they have been attached to the INS Dronacharya at Fort Cochin, about 13 Kms. away from the Headquarters at DINT. Their grievance is that they are not being paid any TA/DA for the journey they have to undertake to perform their duties on INS Dronacharya, on the ground that they have actually been attached to INS Dronacharya

for all purposes and that establishment has thus become their Headquarters. Hence, they have filed this application.

3. The applicants in the second case (OA- 417/89) are similarly situated except that though they claim that a similar order of attachment has been passed in their case, it has not been served on them.

4.1 The grievances of the applicants can be stated thus. They claim that their Headquarters is in DINT at the Naval Base, Cochin. Prior to May, 1988, the applicants were periodically asked to proceed from this headquarter to INS Dronacharya, which is a project of the Navy, for undertaking some works on site. For this purpose, either the applicants had to make their own transport arrangements, in which case they were paid both TA/DA, INS Dronacharya being more than 8 Kms away from DINT, or they were given free transport by the Respondents, as the project has motor vehicles for use for this purpose, in which case they used to receive only daily allowance.

4.2 However, all of a sudden, the impugned order dated 20.5.88 (Annexure-G) was passed by the Flag Officer Commanding in-Chief, Southern Naval Command, Cochin (Respondent-2), by which "they were attached with INS Dronacharya for all purposes namely, discipline, administration and payment of salaries etc. with effect from 24.5.88, until further orders for work in connection with project Vajra". With the passing of this order, the Respondents have stopped giving them TA/DA for journey to the INS Dronacharya and back, and for work done there. The Respondents have also stopped giving them free transport to reach the place of duty.

4.3 The applicants contend that as they belong to an All India Roster, their promotions and transfers can be effected only by the Chief of Naval Staff, Naval Headquarters, New Delhi, ie, Respondent-1. Therefore, the order at Annexure-G attaching them to INS Dronacharya, which is really a transfer from DINT to INS Dronacharya, is one which the Respondent-2 is not competent to pass. It is alleged that there is nothing like "an attachment" as stated in Annexure-G order. It is basically a

transfer order which Respondent-2 is incompetent to issue and hence they have sought a direction to quash.

Annexure-G.

4.4 Their further contention is that, as before, duty to be rendered in the INS Dronacharya should be treated as official duty rendered beyond the distance of 8 Kms. from the normal headquarters of the applicants (namely, DINT) and, therefore, they seek a declaration that they are entitled to TA/DA for the journeys they undertake in this connection.

5. The respondents have denied these allegations.

In the reply filed by them it is stated as follows:-

"The Directorate of Installation Naval Training (DINT) Cochin, is a unit under the administrative control of the Flag Officer Commanding-in-Chief, Southern Naval Command, the 2nd respondent in the application. The unit was set up in the recent past for installation and commissioning of certain defence projects ~~in Naval Base, Cochin and INS Dronacharya~~ Schools in Naval Base, Cochin and INS Dronacharya. The Government have sanctioned certain number of employees in different categories for DINT for execution of these projects. They are liable to be positioned either in Naval Base or in INS Dronacharya. Till early 88 the execution of the projects in Naval Base, Cochin and INS Dronacharya were carried out simultaneously by proportionately distributing the available man-power. Since the projects in Naval Base, Cochin are in completion state, it was decided to provide more staff to the project at INS Dronacharya where the work is of extended duration. Accordingly all the logistic cover for execution of the project was transferred to INS Dronacharya. Till early 88 the employees were sent to Dronacharya by Government Transport. The number of motor transport sanctioned for DINT Cochin is very meagre. These vehicles are not sufficient to shift men and materials to various project sites. It was also found that the

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transportation of increased number of personnel to INS Dronacharya was time consuming besides extra expenditure to the State. Therefore, the 3rd respondent requested approval of the 2nd respondent to attach part of the employees of DINT to the project site at INS Dronacharya in a phased manner depending upon the requirement of service. Accordingly, the 2nd respondent issued orders to attach 59 Tradesmen and 22 labourers in INS Dronacharya during Jan/Feb. 88. Subsequently the 3rd respondent vide letter 309/4/37(PC-6)/190 dated 04 May 88 requested approval for attachment of the applicants to INS Dronacharya. Prior to their attachment to INS Dronacharya the applicants and other categories of staff were occasionally deputed to Dronacharya on temporary duty and, therefore, they were granted TA/DA as per rules wherever applicable. As the man-power requirement in the project site was increased the ~~was~~ occasional deputation of employees was found inadequate. Therefore, due to administrative necessity they were attached to INS Dronacharya. As stated above, the DINT Cochin is set up for execution of certain projects in Naval Base, Cochin and INS Dronacharya. The employees sanctioned for DINT are for all the projects. For administrative convenience, the office of DINT was set up in Naval Base, Cochin. Therefore, the employees cannot claim that they will report to Headquarters office and from there they are to be transported to the project site at Dronacharya and paid TA/DA."

The respondents has, thus, stated clearly the reasons along with a number of others why the applicants were attached to INS Dronacharya and why TA/DA is not being paid to them. They have also explained the circumstances in which free transport had to be discontinued.

6. We have perused the records and heard the learned counsel at length. Shri Girijavallabhan, the learned counsel for the applicants in the first case, vehemently contended that the reasonable claims of the applicants are sought to be defeated by contending that after their attachment to the INS Dronacharya, their Headquarters got shifted to that establishment. The main planks of

his arguments are as follows:-

(i) The Rules do not provide for anything called 'attachment'. Plainly, the Annexure-G order of the second respondent is an order transferring the applicants to the INS Dronacharya, though called attachment;

(ii) However, second respondent is incompetent ^{or hence} to pass any such order and, ~~therefore~~, this order is void and ineffective and, therefore, there has been no change at all in their Headquarters which continues to be DINT;

(iii) Hence, every day, they report for duty at DINT;

(iv) As they are then given duties to be discharged at INS Dronacharya, they proceed from DINT, their normal headquarters, to INS Dronacharya, a distance of about 13 Kms. and after doing the work return home;

(v) Therefore, they have to travel more than 8 Kms. locally ~~is~~ on duty to perform their work and hence, they are entitled to TA/DA.

7. Shri K. Ramakumar and Shri VR Ramachandran Nair,

the learned counsel for the applicant in the second case,

endorsed these arguments, though they seemed to appreciate that the Annexure-G order is not a transfer order and that attachment has some meaning. They argued that the normal TA/DA cannot be denied to the applicants even after the Annexure-G order is passed.

8. Before we consider the various points raised by the learned counsel for the applicant, it would, perhaps, be useful if the provisions of the Fundamental Rules and Supplementary Rules which govern the grant of TA while on tour or otherwise are noticed, for, the claim of the applicants is rested on the ground that they are performing a local journey for the discharge of official duty in the INS Dronacharya. The rules which have a bearing on this subject, which have also been referred to by the applicants are reproduced below:-

(i) FR 9 (32) : "Travelling Allowance means an allowance granted to a Government servant to cover the expenses which he incurs in travelling in the interests of the public service. It includes allowances granted for the maintenance of conveyances, horses and tents."

Definition of headquarters

(ii) SR 59: "The headquarters of a Government servant shall be in such place as a competent authority may prescribe."

Definition of tour

(iii) SR 61: "A Government servant is on tour when absent

on duty from his headquarters either within or, with proper sanction, beyond his sphere of duty. For the purposes of this section, a journey to a hill station is not treated as a journey on tour."

General principle on which travelling allowance is drawn for journeys on tour

(iv) SR 65: "The travelling allowance drawn by a Govt. servant on tour ordinarily takes the shape of either permanent travelling allowance or daily allowance, if either of these is admissible to him. Permanent travelling allowance and daily allowance may, however, in certain circumstances be exchanged for mileage allowance or for the whole or part of the actual cost of travelling. In certain other circumstances actual cost may be drawn in addition to daily allowance or for journeys for which no daily allowance is admissible."

(v) SR 49: "A daily allowance is a uniform allowance for each day of absence from headquarters, which is intended to cover the ordinary daily charges incurred by a Government servant in consequence of such absence."

Distance to be travelled before daily allowance is admissible:

(vi) SR 71: "Daily allowance may not be drawn for any day on which a Government servant does not reach a point outside a radius of eight kilometres from the duty point (ie, the place/office of employment) at his headquarters or return to it from a similar point."

Govt. of India's Orders

xxx xxx xxx

(2) Local journey: "(a) Definition - The phrase 'local journey' shall be construed to mean a journey within the municipal limits or city in which the duty point is located. It shall include journeys performed within the limits of suburban or ~~xxx~~ other Municipalities, Notified Areas or Cantonments contiguous to the Municipality/Corporation of the town or city in which the duty point is located. Journeys within the limits of an urban agglomeration within which a Government servant's headquarters are located will also be treated as 'local journey'."

(G.I., M.F., OM No.F.1(2)-E.IV(B)/66 dated the 29th March, 1967 and 31st July, 1967 and OM No.19030/1/76-E. IV (B) dated the 30th January, 1978.)

(1)

(b) Regulation of TA:- Travelling allowance for a local journey shall be admissible if the temporary place of duty is beyond 8 km. from the normal place of duty irrespective of whether the journey is performed by the Government servant from his residence or from the normal place of duty.

For local journeys a Govt. servant will draw, for journey involved, mileage allowance and in addition draw 50% of daily allowance calculated at the rates laid down in Order(1) above, ie, where the absence from headquarters is for less than twelve hours but exceeding six hours and exceeding twelve hours at 35% and 50% respectively. He will be paid daily allowance even if the conveyance is provided free of charge for local journeys."

(G.I., M.F., OM No.190301/1/73-E.IV(B), dated the 29th June, 1974 and No.19030/1/76-E.IV(B), dated the 30th January, 1978.)

9. In the present case, the claim for travelling allowance is in respect of journeys performed by the applicants from their residence to their place of duty in INS Dronacharya. (The applicants, however, allege that their normal place of duty is DINT and, therefore, after first going to that office, they are required to proceed to INS Dronacharya, their temporary place of duty. It will be shown presently that this has no substance.) As this journey is not in the interests of public service, travelling allowance is not admissible under FR 9(32). The journey is performed by the applicant in their own interest to reach the place of duty so that they can earn their livelihood.

10. In this context, it is relevant to refer to the

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clarification by the Govt. of India/sanctioning con-
veyance allowance, one of the four kinds of travelling
allowances admissible under SR 21. That allowance is
admissible if, in a month, the average monthly 'running
on duty' of the conveyance is more than 200 Kms. It
has been clarified that "journey between residence and
normal place of duty shall not be reckoned as running
on official duty". For similar reasons, the journey
from the residence of a government servant to the place
of his duty can neither be treated as one on duty nor can
it be classified as one on tour for the grant of TA/DA.

11. The applicants are actually working in the INS
Dronacharya which is their normal place of duty located
within the normal headquarter. Therefore, they cannot
claim any daily allowance under SR 49, as they have not
gone outside their headquarters at all. The applicants
can also have no case that they are on tour as the
facts do not conform to the definition of tour given
in SR 61.

12. The only rule which permits grant of daily allowance
for a journey other than tour is SR 71. That rule is

also not applicable in the present case. For, the facts described above show that the applicants reach only their place of duty and do not travel thereafter to any place beyond 8 Kms. from such duty point for temporary duty. Government of India's Order No.2 under SR 71 clarifies that travelling allowance for a local journey shall be admissible if the temporary place of duty is beyond 8 Kms. from the normal place of duty. That is not the case here, because INS Dronacharya is itself the normal place of duty.

13. The claims of the applicants are, therefore, untenable. We would, however, not like to dispose of the case without further considering the argument that Annexure-G cannot be treated as a transfer order (or at any rate, as a valid order of transfer issued by a competent authority) and that, therefore, they are not attached to INS Dronacharya. For, if that order is void, the applicants' claim that their place of duty still is the DINT will have force.

14. The expression 'transfer' has been defined in SR 2 (18) as follows:-

"Transfer means the movement of a government servant from one Headquarters Station in which he is employed to another such station, either

- (a) to take up the duties of a new post or
- (b) in consequence of a change of Headquarters."

While the expression 'station' is not defined, we can get an idea of what it is from a reference to it in SR-32. It states that a journey - other than one on transfer, which begins and ends at the actual residence of the govt. servant - is held to begin or end in any station at the duty point in that station. Therefore, 'station' is actually a place like Cochin, where the duty point - whether it be DINT or INS Dronacharya - is located. Headquarters of a govt. servant shall, according to SR 59, be in such place as the competent authority may prescribe. Therefore, the office where the govt. servant works is not his headquarters. It is only his place of duty. The headquarters is the place or station like Cochin where his office is located.

15. Hence, it is clear from the definition of 'transfer' given in SR 2(18) that a movement from one station to another is necessary. In the two applications before us, the applicants were in Cochin and were placed posted in DINT and they continue to remain in Cochin

even after the Annexure G order was passed by which they were attached to INS Dronacharya. As they continue to remain in the same station, they have not been transferred. In fact, both the applicants and the Respondents agree that there has been no transfer, but for different reasons. The applicant's contention is that Annexure-G order, having been passed by an authority not competent to pass it, ~~xxxorderxxxthatxxxorder~~ is void and there has been no change in their Headquarters, which continue to be at DINT. The Respondents contend that, as there is no movement from one station to another, the Annexure-G order is not a transfer order. It only attaches the applicant from one office ~~is~~ in Cochin to another office in Cochin, both of which are under the control of Respondent-2.

16. The question, therefore, arises whether Respondent-2 was competent to pass the Annexure-G order. ~~Nevertheless~~, The learned counsel for the applicant has referred to Annexure A, B, C & R orders as evidence to show that the transfer of Draughtsmen like the applicants can be made only by the first Respondent. A perusal of these orders indicate that they are distinguishable from the Annexure-G

order. The personnel involved in these orders were transferred either from one Naval Command to another Naval Command in the same capacity or the transfer was made within the same Naval Command but after granting them a promotion. It is obvious that ~~apparently~~, Respondent-1 alone has the powers to effect inter Naval Command transfers and to order promotions of Draughtsmen and their subsequent posting by transfer, if necessary. The Annexures referred to are of such instances and do not prove that Respondent-2 is incompetent to transfer the Draughtsmen within his own Command from one office to another.

17. No doubt, the learned counsel for the applicants pointed out that in the order at Annexure-R produced by the applicants, one Draughtsman, D. Jayakumar, has been transferred from INS Venduruthy to DINT (i.e., an intra Naval Command transfer) by the first Respondent. This does not establish that Respondent-2 does not have such power of transfer. It only establishes that the power can be exercised concurrently both by Respondent-1 and Respondent-2 thought it is generally left to Respondent-2 to make such transfers. It is significant to note that

Respondent-1 has issued this order along with other inter Naval Command transfers. We are, therefore, of the view that the Annexure-G order has been passed by Respondent-2 with full authority.

18. The learned counsel for the applicants then stressed that the applicants were required to first report for duty at the office of the DINT in Cochin Naval Base (ie, their permanent place of duty according to them) and then proceed to their temporary place of duty in INS Dronacharya. He, therefore, argued that DINT continues to be headquarters of the applicants and it is from there they proceed to a place beyond 8 kms. to discharge certain temporary duties, which gives rise to a claim for TA/DA. Though this was vehemently argued, the applicants could not produce any order or evidence to substantiate the contention that even after the Annexure-G order, they are required to report for duty at DINT. On the contrary, this statement has been denied by the respondents. They have stated that as the applicants are earmarked for INS Dronacharya, they were neither required to report to the DINT office nor

can they report voluntarily to the DINT office merely to claim TA/DA.

19. We are satisfied after a perusal of the order at Annexure-G that the applicants have been attached to INS Dronacharya for all purposes and, therefore, they are not required to report for duty on any day at DINT.

Their place of duty has been shifted from DINT to INS Dronacharya in the same headquarters station by the Annexure-G order. Therefore, their new place of duty is in INS Dronacharya. That being the case, they are not entitled to any allowance for going to INS Dronacharya by claiming that this is a local journey on duty. For, this is only a journey from their residence to their place of duty for which they are not entitled to any TA/DA, as pointed out in para 9 supra.

20. It is only necessary to add that, apparently, Respondents have felt some hesitations¹ in describing the change of office of the applicants as a transfer. The Annexure-G order does not "transfer" the applicant from DINT to INS Dronacharya in the sense that expression is understood in the Travelling Allowance Rules vide

SR 2 (18). It is nonetheless a "transfer" for the purpose of calculating joining time available to the govt. servants involved. For, the Central Civil Services (Joining Time) Rules, 1979 defines "transfer" in Rule 3(d) thereof to mean "the movement of a government servant from one post to another either within the same station or to another station to take up the duties of a new post or in consequence of a change of his Head-quarters". The latter portion of the definition reproduces the definition ~~as~~ given in SR 2(18) applicable for TA Rules. The only addition is that for the purpose of joining time, transfer also includes the movement of a government servant from one post to another even within the same station. It is precisely this movement that has been described as an "attachment" in the Annexure-G order, though this expression is not used in the rules. Sometimes, such a transfer is described as a "station transfer" i.e., a transfer within the same station from one office to another. Therefore, the correct position is that in so far as the Travelling Allowance Rules are concerned, the Annexure-G order does not effect any transfer of the applicants. However,

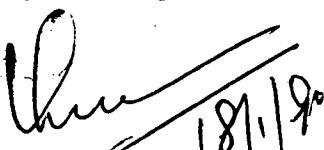
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for the purpose of computing the joining time available to the applicants as a result of the implementation of Annexure-G order, it is a transfer under the CCS (Joining Time) Rules, 1979. With the implementation of that order, their place of duty is shifted permanently from DINT to INS Dronacharya as pointed out above.

21. For the foregoing reasons, we are of the view that the new place of duty of the applicants is at INS Dronacharya and the only journey they perform is from their residence to INS Dronacharya and in respect of such journeys, they are not entitled to any TA/DA under any of the existing rules. The applications are, therefore, dismissed.

22. There will be no order as to costs.


(N. Dharmadan) 18.1.90.
Judicial Member
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(N.V. Krishnan) 18.1.90.
Administrative Member
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