

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 546 of 1991
T. A. No.

DATE OF DECISION 27-8-1991

All India Telegraph Traffic Employees Union Class III, Kerala Circle & 4 others Applicant (s)

Mr MR Rajendran Nair Advocate for the Applicant (s)

Versus

Union of India & another Respondent (s)

Mr AA Abul Hassan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ys*
2. To be referred to the Reporter or not? *Mo*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Mo*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The applicants have in this application filed under Section 19 of the Administrative Tribunals Act prayed for the following reliefs:

- i) To declare that applicants 2 to 5 and similarly situated others are entitled to get D.A. during the period of their training for appointment to higher post including that of ASTT and to direct the respondents to draw and disburse the amounts due to them within a time limit to be fixed.
- ii) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant, and.
- iii) Grant the cost of this Original Application.

2. The first applicant is the All India Telegraph Traffic Employees Union Class-III, Kerala Circle represented by its Secretary and applicants 2 to 5 are Telegraph Assistants who are members of the Union. The applicants 2 to 5 were deputed

for training preparatory to their appointment as Assistant Superintendent of Telegraph Traffic(ASTT) at R.T.T.C, Trivandrum commencing on 17.9.1990. The period of training is 8 months. Though the applicant submitted bills for payment of Daily Allowance, the respondents did not pass the same and make payments to them on the ground that in view of DG, P&T's orders dated 17.8.1987 and 8.3.1989, those who are undergoing pre-promotional training are not entitled to get D.A. during the period of training. In Original Application No.315/89, this Tribunal has declared that the DG,P&T's orders dated 17.8.1987 and 8.3.1989 on this subject was inoperative, null and void. Though the 1st applicant on 10.1.1991 made a representation to the second respondent pointing out that the DG, P&T'S order denying the D.A. to departmental candidates attending pre-promotional training has been declared invalid and inoperative by this Tribunal and requesting that the D.A. may be disbursed to the applicants, finding no response, the applicants have filed this application.

3. Though the respondents took several adjournments for filing reply statement, they did not file the same. When the case came up for final hearing on 6.8.1991, the learned counsel for the respondents though argued the case on behalf of the Department submitted that he had been instructed to request for seeking an extension of time for filing reply statement by 3 months. Since sufficient opportunities had been given to the respondents for filing reply statement, this request was not granted and the case was heard on merits.

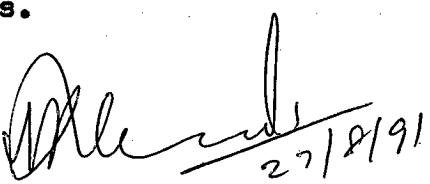
4. The learned Additional Central Government Standing Counsel appearing on behalf of the respondents did not controvert the averment in the application that the applicants 2 to 5 were deputed for pre-promotional training at R.T.T.C., Trivandrum and that the D.A. claimed by them has not been disbursed. The learned counsel submitted that payment of D.A. to the persons undergoing training is to be made in accordance with the rules applicable to the Department and that as per the present instructions, the applicants 2 to 5 are not entitled to get D.A. during their training. In OA-315/89, the identical question came up for consideration before the very same Bench of the Tribunal. In that ^{application} certain Postal Employees who were denied D.A. during the period of their pre-promotional training basing on 2 orders of the DG, P&T dated 17.8.1987 and 8.3.1989 which was marked as Annexure-IV and V in that application challenged the validity of these instructions. Considering the various provisions of the FR/SR relating to payment of D.A. while the Government servants are on training, this Bench by order dated 18.12.1989 declared that the directions contained in the orders of the DG, P&T dated 17.8.1987 and 8.3.1989 were invalid, inoperative and directed the respondents in that case to draw and disburse the D.A. as claimed by the applicants therein. It was observed in the judgement to which both of us are parties:

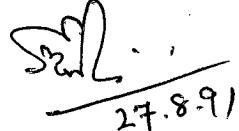
"According to Government orders, G.I., M.F., O.M.No. 19013/1/75-E.IV(B), dated the 22nd September, 1975; No.19013/3/76-E.IV(B), dated the 17th November, 1977, No.19030/1/76-E.IV(B), dated the 30th January, 1978; No.19030/2/86-E.IV, dated the 24th March, 1986 and No.19030/5/86-E.IV, dated the 12th December, 1986 quoted as Government orders No.3 beneath S.R.164

at page 190 and 191 of the Swamy's Compilation of F.R. S.R. Part-II, Government servants deputed to undergo training in India are entitled to get daily allowance according the scales mentioned therein. These Government orders and S.R. 164 are applicable to all the employees under the Central Government. The applicability of these Government orders and the provisions of S.R. cannot be taken away in the case of a specified class of trainees by the DG, P&T on the ground that the Finance Ministry has stated that certain orders issued by the Postal Department were null and void. The contention of the respondents that the persons who are undergoing a training on promotion stand on a different footing than officers undergoing in service training inasmuch as the promotees get a benefit by the training and for that reason they have to bear the expenses for the training, does not appeal to us as a sound argument. The S.R. 164 or the Government decisions cited above do not make any distinction between the persons undergoing training on promotion and persons who are undergoing other inservice training."

The principle laid down in the above ruling is applicable to this case also as the situation is identical. There is no justification for the denial on the part of the respondents the benefit of D.A. to the applicants in this case, while they are undergoing pre-promotional training.

5. In the conspectus of facts and circumstances, we allow the application, declare that the applicants 2 to 5 and similarly situated persons are entitled to get D.A. during the period of their training for appointment to higher post and we direct the respondents to draw the D.A. due to the applicants and to disburse to them within a period of two months from the date of communication of this order. There is no order as to costs.


(AV HARIDASAN)
JUDICIAD MEMBER


(SP MUKERJI)
VICE CHAIRMAN

27-8-1991

trs

CCP-16/92 in
OA 546/91

24.1.92
(V)

8PM of AVH

Mr. M.R. Rajendran Nair for petitioner
Mr. Abul Hassan for respondents

The learned Counsel for the
respondents seeks 3 weeks time to
file reply to the CCP.

Hence fix the CCP for further
directions on 25.2.92

for

SPM
24.1.92

25.2.92

SPM, AVH

None for petitioner
Mr. Abul Hassan, Deas.

Due to paucity of time, fix for
further directions on CCP on 23.3.92

AVH
25.2.92

S.P.M.
25.2.92

2-3-92

SPM & AVH

Mr. Rajendran Nair
Mr. Abul Hassan

The All India Telegraph Traffic Employees
Union (Class III), Kerala Circle along with 4 of its Members
have filed the original application No. 546/91 praying that
it may be declared that the original applicants 2 to 5 and
similarly situated persons are entitled to get daily
allowance during the period of their training for appointment
to the Higher posts including that of ASTT and to direct the
respondents to draw and disburse the amounts due to them

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within a ~~maxim~~ time limit to be fixed; (ii) grant such other relief as may be prayed for and the Tribunal may deem fit and (iii) grant the cost of this original application.

2. This application after enquiry was allowed by our order dated 27.8.91. It was declared that the applicants 2 to 5 are similarly situated persons and are entitled to the daily allowance during the period they were on training and directed the respondents to draw the entitled daily allowance due to the applicants 2 to 5 and disburse the same to them within a period of two months from the date of communication of that order.

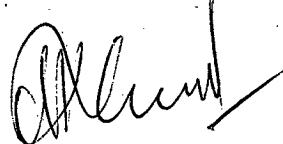
3. Now the 1st applicant in the original application namely, the Union has filed this petition praying that action may be initiated against Shri MC Joshi, Chief General Manager, Telecommunications, Kerala Circle who was the first respondent in the original application for non-compliance of the final order in the original application. It is alleged in this petition that though the 1st respondent, 'Union brought to the notice of the alleged contemner, the declaration contained in the order of the Tribunal and requested him to disburse the daily allowance to similarly situated petitioners 2 to 5, he has not so far given any reply. According to the petitioner, this action of respondent-1 in the original application warrants proceedings under Contempt of Courts Act.

4. We have heard the counsel for the petitioner and also Mr AA Abul Hassan, counsel for the original respondents. On a careful reading of the order of the Tribunal in the original application No.546/91, we find that the order has got two parts. In one part, the order declares that petitioners 2 to 5 and similarly situated persons are entitled to daily allowance when they are undergoing pre-promotional training. The 2nd part contains a direction to the respondents to draw and disburse to the petitioners 2 to 5 in the original application the allowance due to them ~~as allowance~~ within a period of two months

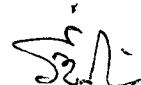
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from the date of communication of the order. There is no complaint that the direction to draw and disburse the daily allowance to the petitioners 2 to 5 has not been complied with. But the complaint is that the daily allowance has not been drawn and disbursed to the similarly situated persons though a list of similarly situated persons was furnished and request was made on their behalf by the 1st petitioner. If the request of a similarly situated person to draw and disburse the allowance is turned down ~~to~~ by the respondent, that person may get a cause of action and the attitude of the respondent may be relevant factor in deciding the award of costs in such a proceedings. But we are of the view that a declaratory relief as is granted in the final order in the original application will not confer on the Union or in the similarly situated other persons a right to move the Tribunal for initiating action under the Contempt of Courts Act on the ground that the 1st respondent has failed to disburse to them the daily allowance.

5. There is no averment in the petition that the respondents have wilfully defied any direction issued by the Tribunal or proclaimed that the declaration will not be honoured by them. Therefore, we do not find any reason or circumstances warranting action under Contempt of Courts Act to be initiated against the alleged contemner. The CCP is therefore rejected.



(AVH)



(SPM)

2-3-1992