

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 548 & 567 of 1991
T.A. No.

DATE OF DECISION 9-8-1991

M Ramachandran & 23 others Applicant (s) in OA-548/91
RK Patel & 5 others - Applicants in OA-567/91

Mr MR Rajendran Nair Advocate for the Applicant (s) in both
the cases

Versus

Union of India & 2 others Respondent (s) in OA-567/91
Chief GM, Telecom, Trivandrum & another- respondents in
OA-548/91

Mr Mathew J Nedumpara, ACGSC Advocate for the Respondent (s) in
OA-548/91

CORAM: Mr P Sankarankutty Nair, ACGSC- Advocate for the
respondents in OA-567/91

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? *fy*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

Since common questions of law and facts are involved
in these two cases they are being heard and disposed of together.

2. The grievance of the applicants in these two cases, who
are employees of the Telecom Department is that the respondents
are refusing to pay them Daily Allowance during the period
of their training for appointment to higher post. The appli-
cants in OA-548/91 are Phone Inspectors, Transmission Assis-
tants, Technicians, Telecom Office Assistants etc. undergoing
training for appointment as Junior Technical Officers. The
applicants in OA-567/91 are Telegraphists ^{and} belong to Gujarat
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Telecommunications^{are} undergoing training at Regional Telecommunication Centre, Trivandrum prior to their appointment as Assistant Superintendent of Telegraphs, Traffic (ASTT).

The common case of the applicants in both these applications is that the period during which the applicants are undergoing training out of their headquarters including the transit should be treated as duty under Fundamental Rule 9(6)(b), that they are eligible to draw daily Allowance during this period and that though they had preferred their claims by submitting bills, the respondents are taking the view that the D.A. would not be payable to them in view of the orders of the DG, P&T dated 17.8.1987 and 8.3.1989. It has been averred in the applications that in Original Application No.315/89, this Tribunal has declared that the orders of the DG, P&T dated 17.8.1987 and 8.3.1989 are invalid and inoperative and that the Government servants deputed for training outside their headquarters are entitled to D.A. On the basis of the above ruling, the applicants pray that it may be declared that they are entitled to get D.A. during the period of their training and that the respondents be directed to draw ^{said} and disburse the D.A. for the periods to them.

3. The respondents have filed a reply statement in O.A.-548/91 and the learned Central Government Standing Counsel submitted that the contentions raised in that reply statement can be treated as adopted in O.A.-567/91. The respondents in the reply statement have contended that this Tribunal has not laid down any principle in its order in

O.A-315/89 having universal application so as to bind the respondents and that therefore the applicants are not entitled to lay any claim on the basis of the above judgement. It has been contended that while considering the claim for the T.A. and D.A. of the applicants, the rules regarding grant of T.A. and D.A. applicable to the Department have been complied with in letter and spirit by the respondents. A further contention has been raised that since the applicants have not exhausted the alternative remedies available to them, under Section 21 of the Administrative Tribunals Act, this application is liable to be dismissed.

4. We have heard the arguments of the learned counsel on either side and have also carefully perused the documents produced. That the applicants had been deputed for training at the R.T.T.C., Trivandrum preparatory for their promotion to the next higher grade is a fact admitted. The case of the applicants that they have not been paid D.A. during the period of training outside headquarters, though they submitted bills claiming such allowances has not been denied in the reply statement. The applicants have in the application alleged that while undergoing training prior to promotion, they have to be treated to be in duty in the parent cadre under F.R. 9(6) 1(b) and that therefore they are entitled to get D.A. under S.R.49 and 164 and that the refusal on the part of the respondents to pass the bills was on the basis of two instructions dated 17.8.1987 and 8.3.1989 of the DG, P&T which have

been declared to be invalid and inoperative by this Tribunal in OA-315/89. While admitting that the applicants were undergoing training preparatory to their promotions and while contending that the respondents have not denied any legitimate claims of the applicants, and that in the matter of granting TA and DA to the applicants, while undergoing training at the R.T.T.C., Trivandrum, the rules ~~which~~ governing payment of TA and DA are complied with in letter and spirit, the respondents have not denied the claim of the applicants that DA have not been paid to them. Neither have the respondents mentioned about the existence of any rule or instructions according to which the applicants are not eligible for such DA. O.A-315/89 was filed by some officials of the Postal Department who were denied DA during their pre-promotional training for appointment to the posts of Postal Assistants on the ground that as per the orders of the DG P&T dated 17.8.1987 and 8.3.1989, marked as Annexure IV and V in that application, the applicants in that case were not entitled to DA during the period of pre-promotional training. Considering the relevant provisions of FRSR and the two O.Ms of the DG, P&T, this Bench in the order dated 18.12.1989 to which both of us were parties, observed as follows:

"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 to 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 Governments orders and the provisions of S.R. cannot be taken away in the case of a specified class of trainees by the D.G., 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.

6. Therefore the directions contained in Annexure-IV and V orders of the D.G, P&T being against the provisions of S.R. and the Government orders cited above, we declare that the applicants are entitled to get T.A. and D.A. for training on their appointment to higher posts as Postal Assistants and therefore we direct the respondents to pass their T.A. bills submitted by them, treating that Annexure-IV and V instructions had never been issued, within a period of two months from the date of this order."

The situation is identical in these two cases. The only difference is that the applicants in these cases are employees under the Telecom Department which was at one time a limb of the P&T Department while the applicants in OA-315/89 were employees of P&T Department. It is futile to contend that there is no enunciation of principle having application to all the Government servants so as to give rise to a claim

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to the applicants and also so as to bind the respondents because the Government of India was a party in OA-315/89 and also because it was declared that as per the FR and the Government instructions, all the Government servants deputed to undergo training in India are entitled to get DA according to the scales applicable to them. Therefore, we do not find any merit in the contention of the respondents that the applicants have no legitimate grievance.

5. The contention of the respondents that the applicant is not maintainable because the applicants have not exhausted alternative remedies before approaching this forum has no merit, because the applicants have filed the applications since the TA Bills submitted by them were not passed by the respondents. No Departmental remedy is provided in such cases.

6. In view of what is stated in the foregoing paragraph, we find that the applicants have a legitimate grievance and that they ^{are} entitled to get D.A. during the period of their training at the Regional Telecommunication Centre, Trivandrum for appointment to the higher post. In the result, the applications Nos.OA-548 and 567 of 1991 are allowed. In OA-548/91, it is declared that the applicants are entitled to get D.A. during the period of their training for appointment to higher post of Junior Technical Officers and the respondents ^{directed} are to draw and disburse to the applicants the D.A. for the period within a period of one month from the date of communication

of this order. In OA-567/91 it is declared that the applicants are entitled to get D.A. during the period of their training for appointment to the higher post of Assistant Superintendent of Telegraph, Traffic and the respondents are directed to draw and disburse to the applicants the D.A. for this period within a period of one month from the date of communication of this order.

7. In the circumstances of the case, there is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

9.8.1991

trs.