

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
T. A. No.

571

1991

DATE OF DECISION 12.2.92

R. Ajayan & 21 others Applicant (s)

M. R. Rajendran Nair Advocate for the Applicant (s)

Versus

Chief General Manager, Respondent (s)
Telecommunications, Tvm.,
and another.

Mr. P. Sankarankutty Nair Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Member (Administrative)

The Hon'ble Mr. N. Dharmadan, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

N.V. Krishnan, AM

The applicants are phone inspectors, transmission assistants, technicians and telecom assistants working in the Department of Telecommunication under the first respondent, the Chief General Manager, Telecommunication, Trivandrum. They have been selected for appointment as Junior Technical Officers. Prior to their promotion they are required to undergo a training. Their common grievance is that, during the period of training they are not being paid daily allowance (D.A, for short) under S.R. 49 and 164. The bills preferred by them in this behalf have not been passed so far.

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2. Applicants state that two orders of the Director General, Posts & Telegraphs dated 17.8.87 and 8.3.89 holding that under the orders of the Ministry of Finance such trainees cannot get D.A. have been declared invalid and inoperative in OA 315/89. Hence the applicants seek a declaration that they are entitled to get D.A. in the above circumstances and a direction to the respondents to pass the D.A. claim and pay it.

3. The respondents have resisted this application and contended that under the existing rules, the applicants are not entitled to D.A. While it is stated that the decision in OA 315/89 will not apply, it is not made clear how this conclusion is reached. Their case is as follows:

4. Exhibit R1 is a copy of S.R.164 which is the relevant rule. There are a number of orders of the Government of India under this S.R. In regard to these instructions respondents state as under:

"Travelling allowance to trainees are regulated by Ministry of Finance OM No.F(5)(31)-EIV(B)/67 dated 7.3.68 (GID No.2 under SR 164) which herewith marked as Annexure-R2. The Ministry of Finance OM No.19013/1/75-EIV(B) dated 22.9.75 (GID No.3 under SR 164) is herewith produced and marked as Annexure-R3. GID No.2 applicable to probationers as well as those who are undergoing pre-promotional training clearly states that DA shall not be admissible to Govt. servant for the period of stay in the training institute and they are eligible for only travelling allowance as on tour without halting allowance.

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/ (sic for 17.8.78)

11. The argument based on Director General vide order dated 18.8.78/ordered payment of TA/DA to departmental officials deputed for training and the same order was cancelled vide OM No.21-34/88-PAT dated 16.6.88 of Telecom Directorate, are all irrelevant to the facts of the case.

12. GID No.3 under SR 164 mentioned in the judgement in OA 315/89 is regarding payment of TA/DA to the officials undergoing (refresher/in-service) training in India. The basis order contained in GID No.3 is the OM dated 22.9.75 (Attached as Annexure-R3). As already stated, the officials undergoing training prior to promotion to higher grade are governed by GID No.2 according to which no daily allowance is admissible for those trainees vide para 3 of GID No.3."

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...contd.

5. In other words, the respondents contend that the applicants are to be treated as probationers and in the light of the instructions given by the Government of India (No.2 under SR 164) ^u and reiterated in Instruction No.3 such probationers are not entitled to D.A.

6. As neither the applicant, who has relied on the judgement in OA 315/89, nor the respondents who contend that the said judgement does not apply to the facts of this case, had produced a copy thereof, we obtained the records of the case for our perusal. It is seen that in that case the application was filed by certain postal employees working as Postmen who were selected for appointment as Postal Assistants and were sent for training. They complained that they were denied the daily allowance for the period of training. The claim for DA was denied on the basis of a memorandum dated 18.8.88, issued by the Director General, Department of Posts in which it was intimated that the earlier instructions of the DG, P&T dated 17th August, 1978 permitting the grant of such DA for pre-promotional training has been withdrawn, as the Ministry of Finance has objected to it as being unauthorised. This was produced as Annexure-IV in that application. Another memorandum of DG, Department of Posts dated 8th March, 1989 which also clarified that Government servants promoted to higher posts and undergoing pre-promotion training should not be granted daily allowance was also exhibited as Annexure-V. By the judgement of the Tribunal in OA 315/89 both these memoranda were quashed and rendered null and void. It was held that SR 164 did not make any distinction between persons undergoing training for promotion and persons who were undergoing other kinds of in-service training. Accordingly that application was allowed.

7. It was submitted that the applicants in the present case are employees of the Department of Telecommunications and that therefore the judgement in OA 315/89 may not apply to the present case. The learned counsel for the applicant then pointed out that in the case of the employees of the Telecommunication Department also the Tribunal has rendered a similar judgement in OA 548/91 and 567/91. We have perused that case also. In that case, though the respondents were given time to file a reply, they did not do so in time. They filed only a statement. It was contended in the statement that the decision in OA 315/89 does not apply to the Telecom Department because the Telecom Department was not a respondent in that application. Other than this, no important submission was made. The case was therefore disposed of following the decision in OA 315/89, considering the fact that till a few years back both the Department of Posts and Department of Telecommunications were headed by a common Head of Department, viz. the Director General of Posts and Telegraphs.

8. We have carefully considered the arguments advanced by the Department. We notice that in the present case the respondents have given a reply, unlike in OA 548/91. The crux of the reply is that the present applicants are only probationers undergoing training and that by virtue of Government of India Order No.2 below SR 164 (Ministry of Finance OM No. F.5(31)-E.IV(B)/67 dated 7th March 1968) no daily allowance is admissible in any case for the periods for which the probationers stayed in training institutes for undergoing training. This has since been reiterated in G.O.I order No.3. These orders are reproduced at pages 177 and 178 of Swamy's Compilation of FR&SR, Part II (Travelling Allowance) 9th Edition, hereinafter referred to as the 'Compilation'. The respondents have exhibited these orders at Annexures R2 and R3.

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9. It is seen from the application that the applicants are undergoing training for appointment to the higher post of Junior Telecom Officer. While under training they were only Phone Inspectors, Transmission Assistants, etc. They had not yet been promoted and therefore, they could not have been categorised as probationers. In the circumstances, the G.O.I. order No.2 below SR 164 will not apply to the applicants, even though they may be members of a Central Service, because they do not have the status of probationers. Therefore, the main ground on which the application is opposed by the respondents has no force.

10. As lengthy arguments were addressed, we have carefully gone through our earlier judgements. SR 164 is in wide general terms and is reproduced below:

"S.R. 164. When a Government servant or student not already in Government service is selected to undergo a course of training, a competent authority may decide the scale, if any, on which he shall draw--

- (a) travelling allowance for the original journey to and the last journey from the place of training, and for halts at such places;
- (b) in the case of training at a school, college or similar institution, travelling allowance for similar journeys on the occasion of holidays and vacations; and
- (c) travelling allowance for journeys, during the course of training.

Provided that the scale so fixed shall not exceed that admissible to Government servants of similar status on duty at the place of training."

This Supplementary Rule is issued under FR 44 relating to payment of Travelling Allowance. In addition to the Govt. of India orders, the decisions of the DG, P&T have also been reproduced in the Compilation. Decision No.1 of the DG, P&T is based on his letters dated 16.2.78 and 18.8.78 ^u of the Compilation. and is reproduced at pages 179-80^u. Para 5 of this letter

reads as follows:

"5. Departmental officers deputed for training prior to appointment to higher posts or grades shall also be allowed daily allowance during the period of training in accordance with Order (3) above subject to the condition that--

- (i) where the period of training is extended beyond the prescribed period on account of the reasons attributable to the individual, e.g. non-passing of the end-of-the-course test, etc., no daily allowance shall be payable for any period beyond the prescribed training period;
- (ii) the general orders contained in Order (3) shall not be relaxed under any circumstances."

It is this direction of the DG, P&T to which the Ministry of Finance took objection and which compelled the DG, P&T to withdraw the circular by the memorandum dated 17.8.87 which was exhibited as Annexure-IV in OA 315/89. That memorandum is not reproduced in the Compilation. Therefore, its text is reproduced below: *from OA 315/89*

" Copy of DG, Posts, New Delhi letter No.17/17/80-PAP dated 17.8.87."

I am directed to invite a reference to this office letter No.17/25/76-PAP dated 18.8.78 communicating the decision of the P&T Board that departmental officers deputed for training prior to appointment to higher posts or grades shall be allowed daily allowances during the period of training in accordance with the Ministry of Finance OM No.19013/1/75-EIV(B) dated 22.9.75 as modified by the Ministry of Finance OM No. 19013/3/76 E-IV(B) dated 17.11.77 read with para 2(c) of that Ministry's OM No.19030/1/76-EIV(B) dated 30.1.78.

2. Ministry of Finance has now stated that the above orders are null and void as it falls outside the competence of this Department. It has, therefore, been decided to withdraw these orders with immediate effect. Past cases already decided need not be reopened.

3. These orders take effect from the date of its issue.

4. This issues with the concurrence of PA(P) vide their diary No.2892 dated 20.7.87."

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be noted that,

It is to with a few verbal changes, the same memorandum has been repeated by the Department of Telecommunications by its letter No. 21-34/88-PAT dated 16th June, 1988. That letter is reproduced below:

1. "D.G., P&T's Letter No. 17/25/76-PAP, dated the 18th August, 1978, communicated the decision of the P&T., Board that departmental officers deputed for training prior to appointment to higher posts or grades should be allowed daily allowance during the period of training in accordance with Government of India Order (3) above.
2. Ministry of Finance has now stated that the above orders are null and void as it falls outside the competence of this Department. It has, therefore, been decided to withdraw these orders with immediate effect. Past cases already decided need not be reopened.

3. These orders take effect from the date of issue."

11. Thus, if at all the respondents had to resist this application, it should have been on the ground that the Department of Telecommunication's letter dated 16.6.88 reproduced above prohibits the grant of daily allowance during the period of training of persons like the applicants. Such a stand has not been taken by the respondents. There is no judgement of the Ernakulam Bench quashing this order of the Department of Telecommunications though an almost identical order of the DG, Department of Posts dated 17.8.87 (Ann.IV in OA 315/89) has been quashed.

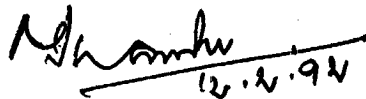
12. No doubt, the Government has general powers to interpret the FRs framed by them. However, as the FRs and SRs are statutory in nature, being pre-constitutional provisions protected by Article 313, ^{they} ~~it~~ cannot be varied to the disadvantage of the employees except by a proper amendment. We are of the view that when SR 164 is in wide general terms and permits the grant of daily allowance to every kind of training, the Ministry of Finance does not have the authority to declare by executive instruction that such daily allowance cannot be granted to persons undergoing pre-promotional training. This can be done by amending the

said S.R. It is because of the Finance Ministry's objection that the DG, Posts had to withdraw his earlier orders of 1978. It is for the reason that the Ministry of Finance cannot restrict the operation of SR 164 by executive instructions, that in OA 315/89 the DG's orders dated 17.8.87 and 18.3.89 (Annexures IV & V therein) were quashed.

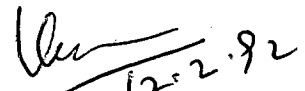
13. As pointed out earlier, the same order of the DG, Department of Posts has been adopted by the Department of Telecommunications vide the circular dated 16.6.1988 reproduced in para 10 above. As an identical circular has already been quashed, it would only be proper to quash this circular also even though no prayer therefor has been made by the applicant and no defence on the basis of this circular has been set up by the respondents. We are of the view that quashing this circular is in line with our decision in OA 315/89.

14. In the circumstances, we quash the circular of the Department of Telecommunications dated 16.6.88 referred to in para 10 above and declare that the applicants are entitled to daily allowance during the period of pre-promotional training which they were undergoing.

15. The application is disposed of as above.


12.2.94

(N. Dharmadan)
Member (Judicial)


12.2.92

(N. V. Krishnan)
Member (Administrative)