

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.598/01.

Monday this the 25th day of March, 2002.

CORAM:

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

P.R.Ramachandran
Surveyor Assistant
Grade I
Office of the Garrison Engineer,
Fort Kochi.Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

v.

1. Garrison Engineer,
Fort Kochi, Kochi.1.
2. Chief Engineer, Navy,
Naval Base, Kochi.
3. Controller of Defence Accounts
Annasalai,Chennai.18.
4. Union of India, represented by
its Secretary, Ministry of Defence,
New Delhi.Respondents

(By Advocate Mr. M.R.Rajkumar)

The application having been heard on 25th March 2002
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

1. The applicant a Defence Civilian employee while working as a Surveyor Assistant (Grade I) at Port Blair was transferred to Kochi in public interest.
2. The applicant is aggrieved by A-4 order dated 28.5.01 of the 3rd respondent made in purported compliance with the CAT's order in O.A.598/98 with the direction to reconsider certain disputes with regard to the denial of the expenditure on account of transportation of personal goods from Port Blair to Madras by ship, for clearing and forwarding charges of personal effects from Port Blair to Madras and transportation of goods from Madras

to Cochin. The applicant is also aggrieved by A-6 order whereby as a fall out of A-4, the alleged excess amount drawn by way of Transfer TA advance is ordered to be recovered in addition to the recovery already effected. The applicant's pay was above Rs.1900/- but below 2800/- p.m. and as such his entitlement with regard to transportation of personal effects was 3000 kgs. as per A-10. But those in the pay range of Rs.2800/- and above and below Rs.5100/- was eligible to carry a full four wheeler wagon or 6000 kgs. by goods train or by one single container. The applicant canvasses for the proposition that since one single container is permitted for those who are eligible for 6000 Kgs. in weight, the applicant should be eligible for transportation of half a container by volume. To put it succinctly, the applicant's claim is that he is eligible for expenditure incurred by him on account of transportation of 3000 kgs. of goods from Port Blair to Chennai by Shipping Corporation of India who charged him on volume basis. Further reliance is placed on A-11 showing the freight in force when the applicant undertook the journey and transported the goods from Port Blair to Chennai. A-13 filed by the applicant along with the rejoinder contains the full text of Defence Services Regulations (Travel Regulations) Revised Edition 1991. The applicant has also filed A-12 to show that the Shipping corporation of India, the authorised Government Carrier, were charging the freight for transportation of goods on volume basis as it would yield more freight to them. The applicant wants to highlight the fact that he had ^{no} control over the situation and he had necessarily incurred the freight expenditure on volume basis. The applicant also preferred a claim on account of freight charges incurred on transportation of goods from Chennai to Ernakulam, his place of duty. This claim

was denied on the ground that the applicant did not furnish documentary evidence to show that his family had accompanied him from Chennai to Ernakulam. Accordingly, the applicant has prayed for the following main reliefs :

- i. Call for the records and quash Annexure A4 to the extent it disallows the claim for personal effects for the sea journey between Port Blair and Chennai and for the rail journey between Chennai and Ernakulam.
2. Call for the records and quash Annexure A6 in as much as it orders recovery of a sum of Rs.6650/- from the salary of the applicant for the month of June, 2001.
3. Declare that the applicant is entitled to be paid personal effects to the extent of half container by ship under Annexure A4 between Port Blair and Chennai and for 3000 Kgms by goods train between Chennai and Ernakulam and direct the respondents to regulate his claim for personal effects accordingly."

3. The respondents have resisted the OA by stating that there are clear instructions with regard to the admissibility of charges on account of transportation of personal effects to the government servants falling within different pay ranges. It is contented that the applicant would be entitled to carry personal effects of 3000 Kg. on transfer. Emphasis is placed on weight and not on volume, according to the respondents. Therefore the charges incurred on account of volume is not permitted under the existing instructions, it is submitted. Reliance is placed on Annexure R-1 letter dated 20.5.96 of the Shipping Corporation of India which prescribes the rates at Rs.748.92 p. + BSC 61.50 per ton or Rs.625.75 p. + BSC 61.50 per CBM. In Annexure R-2, which is the extract of the Ministry of Defence's letter dated 11.1.84, it is clearly laid down that in case family accompanies the government servant on transfer, the government servant would be entitled to the existing admissible travelling allowance

including the cost of transportation of the admissible weight of personnel effects according to the grade to which the officer belongs, irrespective of the weight of the luggage actually carried. Though these provisions are primarily with reference to the Central Government employees on transfer to and from the North Eastern region, the provisions of these orders are, mutatis mutandis applicable to the Central Government employees posted in Andaman and Nicobar Islands also subject to certain specific exceptions. The respondents' argument therefore is that, the claim was exclusively related to weight and there was no justification for making a claim on the basis of volume. With regard to the claim of transportation charges from Madras to Ernakulam, the denial of claim is sought to be justified by stating that the applicant did not furnish documentary evidence concerning the movement of his family from Chennai to Ernakulam. In this connection, reliance is placed on Annexure R-2(3) where it is stated that, such transportation charges can be admitted without production of any receipt provided there is documentary evidence to show that the family accompanied the employee.

4. I have heard Shri Vishnu Chempazhanthiyil, learned counsel of the applicant and Shri Rajkumar, Additional Central Government Standing Counsel for the respondents. Shri Vishnu has vigorously contended that the applicant was entitled to the claim of transportation charges on the basis of volume as against weight which is insisted upon by the respondents. He would draw my attention to A-10. It is true that there is no reference to passage of goods by sea which is evident from the details of entitlements narrated in A-10. But in respect of those within the next higher pay range, would be entitled to one full four

Q.

wheeler wagon or 6,000 K.Gs or a single container. According to the learned counsel of the applicant, in the absence of any clear reference to transportation by sea, it is a matter of judicious inference that, when the applicant's maximum eligibility was 3,000 k.g. by weight, he would be eligible for claiming expenditure for half(1/2) a container, on the analogy that 6,000 kgs. is matched with one container in the immediate higher scale. It is contended that Shipping Corporation has admittedly charged on the basis of volume since that yielded them more revenue. The applicant has no choice in the matter. That being so, the applicant would be entitled to the actual expenditure which he bonafide incurred and which could not have been escaped. With regard to the documentary evidence required for the purpose of claim of transportation charges from Chennai to Ernakulam, Shri Vishnu would invite my attention to the fact that the respondents had granted full advance for the applicant and his family for the purpose of undertaking the journey including the DA from Port Blair to Ernakulam both by sea and train. He would also submit that these entitlements have been granted fully on the assumption that the family accompanied him even in the settlement bill. That being the position, the applicant could not be denied genuine transportation charges from Chennai to Ernakulam on the tenuous technical reason that the applicant did not furnish documentary evidence regarding the journey undertaken by the applicants family alongwith him, the learned counsel would urge.

5. Shri Rajkumar has relied on the averments in the reply statement as well as the additional reply statement. He would state that the applicant's claim in regard to transportation of goods from Port Blair to Chennai was restricted to the legal

entitlement ie, charges by weight as is evidenced by Annexure R1 and R2, particularly R-2. As far as the claim of transportation charges from Chennai to Ernakulam is concerned, it is revealed by the ACGSC that as mentioned in the additional reply statement, the applicant has been advised to resubmit the claim afresh for luggage charges from Chennai to Ernakulam. He would submit that this would be considered on receipt of the necessary details.

6. I have perused the records and considered the arguments. With regard to the first claim, viz. transportation of personal effects from Port Blair to Chennai I find that there is no specific provision as to how the claim of transportation of goods by sea with regard to the range of pay to which the applicant belongs would be governed. Although there is no specific provision under the existing orders and instructions, it is clear that employees within the salary range of Rs.1900-2800/- would be entitled to 3000 Kgs by goods train vide rule 76 (d) of Travel Regulations, (Defence Services Regulations), Revised Edition 1991. It is pertinent to note that in the same regulations, Rule 76(c) deals with journey by sea and there is a specific reference to the entitlement of employees belonging to Rs.1900 to Rs.2800. Thus there appears to be a lacuna with regard to the transportation of goods by sea. However, this is said to be nullified by the fact that, in any case, the employees belonging to the applicant's pay range can claim only transportation charges on the basis of weight. Annexure R-2 order dated 11.1.1984 makes this sufficiently clear. Annexure R-1 communication dated 20.5.96 of the Shipping Corporation of India would show the tariffs on the basis of weight as well as volume.

Q

However, Shipping Corporation of India has made it clear that they would always be charging freight on the basis of volume since that would be more advantageous to them vide A-12 communication dated 17.5.96. The applicant had no choice in the matter of transportation of goods except by paying the freight charged by the Shipping Corporation of India. I consider that it would be unmerited hardship if an additional expenditure is caused to be incurred by applicant under circumstances beyond his control. Transportation of goods by sea was an imperative. Shipping Corporation of India had the choice in the matter of levy of freight by volume. I therefore, hold that the applicant would be entitled to claim the charges on account of transportation of personal effects of 3000 kgs on the basis of volume as unavoidably incurred, not as a matter of personal luxury, but as a matter of occupational incidence. With regard to the tariff in force I find that the tariff details given by the respondents is slightly outdated. The R-1 dated 20.5.96 has been replaced by A-11 dated 1.5.97 wherein the rates have been revised particularly BSC (presumably basic surcharge). Thus when the permitted weight is ceiled at 3000 kgs, expenditure actually and necessarily incurred on volume basis has to be allowed.

7. With regard to the claim of transportation charges from Chennai to Ernakulam, I find that the Learned ACGSC has fairly accepted that the matter requires reconsideration and would be reconsidered on the basis of the fresh claim to be submitted by the applicant. Even otherwise, I find that the claim is admissible since the respondents have been gracious enough to allow the applicant the full advance TA/DA pertaining to himself

[Signature]

and his family, and the DA at corresponding rates as well as the train fares from Chennai to Ernakulam have also been allowed in the final settlement Bill. The fact that the family accompanied the applicant needed no further proof. Therefore even on merit, the applicant's claim has to be allowed. However, since the matter is under reconsideration, this is only a technical formality.

8. With the above observations, I dispose of the application with the following orders /directions:

(i) A-4 to the extent it disallows the claim for personal effects transported by sea between Port Blair and Chennai and by train from Chennai to Ernakulam is set aside.

(ii) In regard to the recovery of alleged excess Travelling Allowance drawn by the applicant, the interim order as per order dated 13.7.2001 is made absolute and the amount already recovered should get reflected in the revised final settlement Bill to be passed in accordance with the above directions.

9. The above directions shall be carried out within a period of two months from the date of receipt of a copy of this order. Parties shall bear their own costs.



T.N.T. NAYAR

ADMINISTRATIVE MEMBER

- 9 -
APPENDIX

Applicant's Annexures:

1. A-1: True copy of order No.100066/1725/EIB dt.17.4.1997 of the 2nd respondent.
2. A-2: True copy of order dt.14.2.2001 in OA No.598/98 of this Hon'ble Tribunal.
3. A-3: True copy of the representation dt.23.3.2001 to the 3rd respondent.
4. A-4: True copy of letter No.T/901/CE (N) KOCHI dt.28.5.2001 of the 3rd respondent.
5. A-5: True copy of letter No.1028/Gen/17/EIB dt.30.5.2001 of the 1st respondent.
6. A-6: True copy of order No.1104/3658/E1P dt.29.6.2001 of the 1st respondent.
7. A-7: True copy of letter No.PC to MFPT/2237/NHQ/141/D(Nov)/95 dt.17.1.1995 of the 4th respondent.
8. A-8: True copy of the order dt.28.10.1999 in OA No.867/97 of this Hon'ble Tribunal.
9. A-9: True copy of letter No.4(19)83/D (Civ-I) dt.11.1.1984 of the 4th respondent.
10. A-10: True copy of the Rule 76 (d) (i) of Travel Regulations (relevant portion).
11. A-11: Photocopies of the rates of the Shipping Corporation of India Ltd. dated 1.5.1997.
12. A-12: True copy of the letter No.N11 dated 17.5.1996 issued by the Shipping Corporation of India.
13. A-13: True copy of the Travel Regulations Revised Edition 1991 (relevant portion).

Respondents Annexures:

1. R-1: True copy of the letter dated 20.5.96 send by Shipping Corporation.
2. R-2: True copy of the MOD O.M.No:4(19)83/D (Civ-I) dated 11.1.1991.
3. R-3: True copy of the MOD I.D.No:4(5)88/D (Civ-I) dated 15.12.88.
4. R-4: True copy of the MOF DDE No.dated 22.7.98 r/w SR 116 and GOI VII.
5. R-5: True copy of the disallowance memo No:T/901/CE (N) dated 30.5.01.
