

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 84
T. A. No.

1990

DATE OF DECISION 21.9.90

K. B. Suresh Applicant (s)

Mr. Josemon K.J. Advocate for the Applicant (s)

Versus

UOI (rep. by CE, Southern Command, Pune) and 4 others Respondent (s)

Mr. K. Prabhakaran, ACGSC Advocate for the Respondent (s)

CORAM:

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

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

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

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

The simple issue involved in this application is whether the respondents are entitled to recover by the impugned Annexure 'F' and Annexure 'L' orders the transfer travelling allowance granted by them to the applicant in the special circumstances of the case.

2. The brief facts giving rise to the issue are as follows.

The applicant is a IDC under the fifth respondent at Cochin. He was transferred by the Headquarters, Southern Command, Pune to Port Blair vide order dated 15.2.1989

Annexure A and its extract Annexure-B. That order stipulated that the movement order should be issued before 31st May, 1989.

2.2 By the Annexure-C order dated 31.3.1989 the fifth respondent informed the applicant that the SOS/^(i.e. movement) will be on 31.5.89 or to synchronise with the sailing programme from Madras to Port Blair.

2.3 For the purpose of his transfer the applicant obtained T.A. advance of Rs. 3950/- on 18.5.89. In preparation for the transfer, he spent Rs. 583.50 towards reservation of ship ticket and incurred Rs. 300/- on transport of his luggage from his village to the booking office and Rs. 765/- for its transport from Cochin to Madras.

2.4 When he was thus all set to proceed to Port Blair, ~~xx~~ Annexure-D telegraphic message dated 24.5.89 was received by the Respondent No. 5 informing him to withhold the move of the applicant, if not already moved on transfer. The applicant states that he was informed of this order on 30.5.1989.

2.5 Thereupon, the applicant had, on 1st June, 1989 itself, submitted a representation to the Chief Engineer, Southern Command, Pune (Ext. E) with copies to respondents 2 and 3. No reply was received to this representation.

2.6 The applicant also wrote on 6.6.1989 (Annexure-H) to the Andaman Administration for the cancellation of the tickets to Port Blair and refund of the amount. He was informed by Annexure-I letter to approach the Shipping

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Corporation of India for this purpose as the money is already advanced to them.

2.7 Thereafter, by Annexure-F letter from the fifth respondent, the applicant was informed that his transfer orders had since been cancelled and he was directed to refund the transfer T.A. of Rs. 3950/--.

2.8 The applicant filed a claim Annexure-K for Rs. 2923.50 on account of expenditure incurred by him following the cancellation of his transfer. This claim was not admitted and the applicant was informed as follows by the Annexure-L order dated 17.1.90:

"In continuation to this office letter even No. dt. 16.10.89, it is stated that the claim cannot be admitted in audit for the following reasons:

(a) The Movement Order was issued on 31.3.89 with date of SOS 31.5.89 and the move was withheld on 30.5.89 itself (i.e) before the date of SOS. The individual would have cancelled the ship tickets immediately since the sailing date was 15.6.89 and as such sufficient time was there at the disposal of the individual for cancelling the tickets.

(b) The individual was expected to be SOS on 31.5.89 whereas he has booked the luggage on 24.5.89 itself. He should not have booked the luggage before the actual SOS date except at his own risk.

2. As the existing rules do not provide for the reimbursement of the expenditure since the transfer had not taken place, the claim is rejected in audit. The advance of Rs. 3950 may please be recovered from the individual together with penal interest for the period from 1.6.89 to the date of deposit under intimation to this office.

3. The claim is returned herewith."

2.9 It is in these circumstances that this application was filed.

3. The respondents have filed a reply denying the allegations. They contend that the applicant is not entitled to any relief. Their submission^{is}/as follows:

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"It is submitted that the movement order to the applicant was issued on 31.3.89 with the date of SOS on 31.5.89 on or about to synchronising the sailing programme from Madras to Port Blair." The date of SOS shown as 31.5.89 in the movement order is subject to change based on sailing programme of the ship from Madras to Port Blair. The applicant was told verbally on 29.5.89 about withholding of his move to Port Blair and the order to the effect was noted by him on 30.5.89. It is submitted that the applicant moving his luggage from Palluruthy to Madras on 24.5.89 prior to the date of SOS i.e. 31.5.89 as mentioned in the movement order is not in order. It is

submitted that the steps taken by the applicant to transport his luggage to Madras without receiving the copy of the movement order is purely at his own risk and the respondents cannot be held responsible for such action."

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"it is submitted that when the applicant was informed on 30.5.89 that his move was withheld he should have immediately approached the concerned shipping authority for cancellation of the ship tickets. On the other hand he has only approached the Secretary Andaman Nicobar Port Blair through ordinary letter on 6.6.89 that too a week after he was told that his move was withheld. Due to this reason the letter of Andaman Nicobar Administrative Secretariat dt. 2.8.89 was received late."

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4. We have heard the counsel and perused the records of the case.

5. When the case came up for admission for the first time on 30.1.90 before another Bench, the learned counsel for the respondent sought two weeks time to sort out the matter. On 14.2.90, to which date the application was then adjourned, we heard the matter before admission and passed the following order:

"The matter has been heard again. We are of the view that probably this matter could be settled amongst the parties themselves and for this purpose we direct the applicant to produce whatever evidence he has to/in support of the \angle R-2 claim made by him in his representation (Annex.E) and furnish necessary particulars stating that these amounts have been fully spent and not been refunded to him by any other authorities.

We are, however, satisfied that the applicant acted bonafide in vacating his house and booking his luggage to Madras around the middle of May. These facts should be taken note of by the respondents when the matter is dealt with."

6. When the case came up for final hearing today, the learned counsel for the respondents submitted that it was not possible for the respondents to settle the matter out of court.

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7. In our view the respondents have taken an unreasonable and unjust stand.

8. If the applicant had incurred expenditure on transfer after receiving intimation about the Annexure-D decision to withhold his movement on transfer, the respondents could legitimately claim that the amount be recovered from him. Admittedly, the applicant had incurred expenditure on his ticket and transport of luggage before receiving such intimation on 30.5.89.

9. The further submissions of the respondents that the transfer advance sanctioned to him on 18.5.1989 was required to be utilized on or after 31.5.1989 (i.e. the date of striking off strength from the unit) and that it was irregular to have spent sums on purchase of tickets and movement of his luggage are astounding. No rule or instruction has been cited in support of this contention.

On the contrary the instruction is as follows:

"Charges for the transport of personal effects of an officer on transfer may be admitted in audit if they do not for good and sufficient reasons accompany him but are carried within a reasonable time before or after the date of his journey on transfer." (G.I.F.D., Letter No. 51-E.B. dt.18.1.1915)

We are of the view that the conduct of the applicant was reasonable. He drew the transfer T.A. only on 18.5.89 i.e. less than two weeks before he was to be relieved on 31.5.89. The applicant was entitled to make advance preparation for his transfer particularly when definite orders had been issued xxxxxxxxxxxxxxxxxxxxxxx

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to that effect and he was given a direction to be prepared to move on 31.5.89 by the Annexure-C order. Hence he cannot be faulted at all for getting his luggage packed and sent to the booking office in Cochin and then transferred xx to Madras and also for purchasing his ship ticket. Not only that, he had also surrendered his and family accommodation during the second week of May, 1989. It is for these reasons that we observed on 14.2.90 when the case came for admission that we were satisfied that the applicant acted bonafide.

10. There is another aspect to this case, which shows that the responsibility for all this infructuous expenditure has to be borne by the respondents themselves. The Headquarters Southern Command, Poona issued orders on 15.2.89 transferring the applicant to work under C.E.(P) ~~to~~ Port Blair (Annexure-A). The Annexure-C order directed that the SOS of the applicant to proceed on such transfer is 31.5.89. Copies of both these orders had been sent to the C.E.(P), Port Blair. It is that authority, which requested the second respondent by a signal dated 22nd May, 1989 to withhold the transfer of the applicant (Ann.-D). In these circumstances, we are of the view that instead of blaming the applicant for spending the transfer T.A. before 31.5.89 (i.e. before receiving the movement order) as has been done in the impugned order Annexure-L and in the reply affidavit, the respondents should recognise that it is

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the last minute withholding of the movement of the on transfer and its communication to the applicant applicant/only on 30.5.89 resulted in the applicant bonafide taking the steps he did in pursuance of the transfer order. He cannot be blamed for his action and he should not be asked to bear any part of the benafide expenditure on his infructuous transfer.

11. There is only one claim in regard to which the applicant may have to be saddled with some responsibility. This is with regard to the ship ticket. He was informed by the Annexure-I letter dated 2.8.89 of the Andaman Administration that he has to take up the matter with the Shipping Corporation of India for the refund of the amount. Obviously the applicant should have followed up this matter diligently and tried to get the refund from this source. This alternative is still open to him.

12. In this view of the matter, we allow this application with the following orders/directions:

i) The impugned orders dated 4.7.89 (Annexure-F) and 17.1.90 (Annexure-L) are quashed.

ii) The fourth respondent is directed to accept within two months from the date of receipt of a copy of this order, in ~~audit~~ ~~xxx~~ the claim of of the applicant in Annexure-K for Rs. 450/- as packing allowances, subject to the rules in this behalf and the claims for Rs. 300/-, Rs. 765/- and Rs. 825/- referred to therein after verification

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of the proofs of expenditure stated to have been submitted in original by the applicant and inform the applicant and the second respondent.

iii) The respondents are entitled to recover from the applicant the balance from the transfer T.A. advance that remains after the applicant's claim are allowed in part as in (ii) above and action in this behalf may be taken after obtaining full information from the fourth respondent.

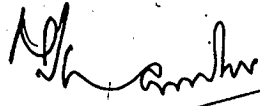
(iv) Subject to this, the interim order is vacated.

13. This is a case where the matter should have been settled out of court by the respondents, particularly after the observation we made on 14.2.90 in the context of an out of court settlement.


14. Despite the very strong case presented by the applicant which persuaded us to make the above observation, the respondents have not thought it fit to work out a reasonable settlement/ out of court. That compelled the applicant to pursue his remedy before us at an appreciable cost to himself. We are of the view that in these circumstances it is in the interest of justice to allow him costs. Accordingly we allow Rs. 1,000/- (Rupees one thousand only) as costs to be paid by the second respondent. We further direct that this amount shall be set off against the amount found recoverable from the applicant as per

sl. No. (iii) of the preceding paragraph.

14. The application is allowed as above.



(N. Dharmadan) 21.9.90
Judicial Member



(N. V. Krishnan)
Administrative Member

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