

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 18-12-1989

PRESENT

HON'BLE SHRI S.P.MUKERJI, VICE CHAIRMAN
&
HON'BLE SHRI A.V.HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.315/89

O.N.Gopalan
C.P.Chериан
Roy Daniel
K.D.Hari
P.K.Gopalakrishnan - Applicants

V.

1. The Senior Superintendent of Post Offices, Ernakulam.
 2. The Director of Postal Services, Cochin Region, Cochin-11.
 3. The Director General, P&T Department, New Delhi.
 4. Union of India represented by its Secretary to Govt. Department of Posts, New Delhi. - Respondents
- M/s MR Rajendran Nair & PV Asha - Counsel of the applicants
- Mr P Santhalingam, ACGSC - Counsel of the respondents

O_R_D_E_R

(SHRI A.V.HARIDASAN, JUDICIAL MEMBER)

The applicants are Postal employees. The applicants 1 to 4 while working as Postman and applicant 5 as Class IV employee, they were selected for appointment as Postal Assistants being successful in competitive examination held on 24.5.1987. The applicants

1 to 4 were directed to join for a theoretical training for a period of 2 months and 3 weeks commencing on 1.12.1987 and the 5th applicant was directed to join as trainee at Mysore on 23.5.1988. In the memos, it was stated that during the period of training, the candidates would draw their pay and allowances and that the period of training would be treated as duty under FR(6)(1) and that they would be eligible for TA as on tour during the period of training. As per the instructions, each of the trainees was to pay mess advance of Rs.436/- and Rs.16.40 as seat rent, Rs.3/- towards welfare fund and Rs.5/- towards the recreation club. The applicants were given advance payments towards T.A. and the applicants 1-5 took advance of Rs.1900/-, 1500/-, 1200/-, 1500/- and 750/- respectively. The expense during the training was nearly Rs.1700/- each. The applicants spent the advance TA paid to them on the assurance that they would be eligible for TA and DA during the training. All the trainees who participated in the previous training programmes were granted TA and DA. The candidates from RMS division, who attended were also paid full TA and DA, but when the applicants the training alongwith the applicants/submitted their final TA bills on completion of the training, the bills were passed only for the expenses for the to and fro journey and the remaining part of the claims were not sanctioned. The applicants made representations to the

Director of Postal Services, Cochin requesting him to sanction the TA, but they have not received any reply. On the basis of a letter from the Ministry of Finance stating that the decision of the Post and Telegraph Department, allowing daily allowances during the period of training to the employees of the P&T Department deputed for training prior to appointment to higher post is null and void, the P&T Department had taken a decision ^{amounts paid as} to recover the TA and DA allowed to the employees other than the expenses for actual journey on the basis of a letter of the D.G., P&T, Govt. of India at Annexure-IV. To the clarification sought for ^{on} Annexure-IV in this matter, the DG, P&T has issued a circular No.17-16/80-PAP dated 8.3.1989, wherein it has been clearly stated that departmental candidates selected to a higher post from general quota undergoing probation training or Government servants promoted ^{to} higher post undergoing ~~xxxxxxx~~ prepromotional training and outside candidates newly appointed in Government service undergoing probationer training would not be entitled to daily allowance. ^A copy of this order at Annexure-V. Basing on Annexure-IV and V, when the Department started proceedings to recover the advance payment made to the applicants, they filed this application challenging the validity of Annexure-IV and V orders and praying that ^{it may be declared} the applicants are entitled

to TA and DA on their deputation for training. In the application, it has been averred that in view of the Rule-49 and 164 of the Supplementary Rules and the Government of India orders dated 22.9.1979 and 30.1.1978 to get quoted below the SR-164, they are entitled/the TA and DA and that the Annexure-AIV and AV which are repugnant to the Government orders and to the provisions of Rules-49 and 164 of S.R. are invalid. It has further been contended that since in the memo directing them to join for the training, they were made to believe that they would be entitled to TA and DA and having given them advance TA and DA, the respondents are estopped from saying that the applicants are not entitled to get the TA and DA.

2. In the counter affidavit filed on behalf of the respondents, it has been contended that Annexure-IV and V orders are legal and valid, that the advance TA was given to the applicants by oversight without adverting to the to the decision contained in Annexure-IV order and that as Annexure-IV and V orders are the latest orders governing the payment of TA and DA for trainees deputed for obligatory training on promotion, the applicants are not entitled to get the TA and DA as claimed by them.

3. We have heard the arguments of the learned counsel on either side and have carefully gone through the records,

4. Annexure-I is the memo issued by the Senior Superintendent of Post Offices, deputing applicants 1 to 4 for training for a period of 2 months and 3 weeks. They were directed to report for training at PT Mysore. In paragraph-3 of the memo, it has been made clear that they would be entitled to draw pay and allowances that the period of training would be treated as duty under FR-6(1) and that they would be eligible for TA as on tour during the period of training. Annexure-II contains instructions to the candidates for training. In this it is ^{seen} stated that the trainees would pay for their mess. It is a common case that TA advances were paid to each of the applicant and that the department is now taking steps to recover the amounts paid to them as advance less the actual travel expenses on the ground that as per the instructions contained in Annexure-IV and V orders, the trainees are not entitled to anything more than the actual travelling expenses.

5. The impugned order at Annexure-IV of the D.G., P&T dated 17.8.1987 reads as follows:

"I am directed to invite a reference to this office letter No.17/25/76-PAP dt.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 accordance with the Ministry of Finance O.M.No.19013/1/75-EIV(B) dt.22.9.75 as modified by the Ministry of Finance O.M.No.19013/3/76 EIV(B) dt.17.11.77 read with para 2(c) of that Ministry OM No.19030/1/76-EIV(B) dt.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 takes effect from the date of its issue.

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

A reading of this order of the D.G., P&T would make it clear that the D.G., P&T had decided to withdraw the orders contained in letter No.17/25/76-PAP dated 18.8.78 communicating the decision of the P&T Board for allowing daily allowances to the officers deputed for training, but the 2 O.Ms of the Ministry of Finance mentioned in this order have not been withdrawn and the D.G., P&T has no authority to withdraw the O.M. issued from the Ministry of Finance also. Annexure-V is a clarification issued by the D.G., P&T on 8.3.89 wherein it has been clarified that certain classes of officers deputed for training would not be entitled to get the daily allowance, but the grant of T.A. and D.A. to officers deputed for training or on duty away from headquarters are governed by the provisions of F.R.S.R. and the Government orders on the subjects. As per Rule 69 of the S.R. "Except where otherwise expressly provided in these rules, a Government servant not in receipt of permanent travelling allowance draws travelling allowance for journeys on tour in the shape of daily allowance".

S.R. 164 laid down as follows:

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 place;
- (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".

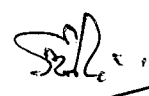
According to Government orders, G.I., M.F., O.M.No.19013/1/75-E.IV(B), dated the 22nd September, 1975; No.19013/3/76-E.IV(B), dated the 17th November, 1977, No.19030/1/76-E.IV(B), dated the 30th January, 1978; No.19030/2/86-E.IV, dated the 24th March, 1986 and No.19030/5/86-E.IV, dated the 12th December, 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 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 inservice 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 Governments orders cited above, we declare that they are invalid and inoperative. 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.

7. There will be no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


18.XII.89
(S.P. MUKERJI)
VICE CHAIRMAN

18-12-1989

trs