

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 326 of 2001

Tuesday, this the 4th day of March, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. M.C. Varghese,
5G, ENARC Apartments,
Marar Road, Trichur,
Assistant Commercial Manager (Retired),
Southern Railway, Palghat Division,
Palghat.Applicant

[By Advocate Mr. Siby J Monippally]

Versus

1. Union of India represented by
Chairman, Railway Board,
New Delhi.
2. General Manager,
Southern Railway,
Park Town, Chennai.
3. Senior Divisional Personnel Officer,
Palghat Division, Palghat.Respondents

[By Advocate Mr. P. Haridas]

The application having been heard on 4-3-2003, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

This is the second round of litigation between the applicant, a retired railway officer, and the railway administration on a claim of the applicant for reimbursement of the litigation expenses and expenses connected thereto in defending a case under the provisions of Prevention of Food Adulteration Act, 1954 by the applicant in his capacity as Assistant Commercial Manager and Special Officer of the Southern Railway Employees Cooperative Canteen at Salt Quarters, Madras. When the claim was denied, the applicant

approached this Tribunal earlier by filing OA No.1056/2000 which was disposed of with a direction to the 2nd respondent to consider the representation of the applicant claiming reimbursement and to dispose of the claim in the light of the rules and instructions on the subject. The impugned order denying the claim has been passed pursuant to the above direction and hence, the applicant is again before us. The undisputed facts of the case are as follows:-

2. The applicant, while working as Assistant Commercial Manager, Salt Quarters, Madras and as Special Officer, Southern Railway Employees Cooperative Canteen, was prosecuted under the provisions of Prevention of Food Adulteration Act, 1954 in CC.No.11009/92 before the 6th Metropolitan Magistrate Court at Egmore, Chennai. The applicant was prosecuted only because he was the Assistant Commercial Manager and Special Officer. He defended the case and had to appear in the Court several times, while he was on leave. He paid counsel fees to the counsel who defended his case and also spent money for travelling. After his acquittal by the judgement dated 20th October, 1999 (Annexure A2) the applicant who had by then retired preferred the claim for reimbursement. The claim has now been ultimately rejected by the impugned order dated 14-2-2001 (Annexure A9) on the ground that the applicant was acquitted only on the benefit of doubt and also because he was not entitled to TA/DA as he could have obtained the pass or used the metal pass for his journey. Aggrieved, the applicant has filed this application seeking to set aside the impugned order Annexure A9 and for a direction to the respondents to reimburse all expenditure the applicant incurred for the conduct of CC.No.11009/92 before the Magistrate Court at Egmore, Madras with 24% interest till the date of payment and also the travelling expenses.

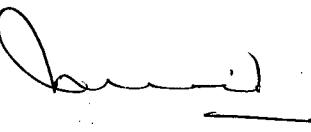
3. Respondents resist the claim of the applicant on the ground that the acquittal of the applicant was on benefit of doubt and that the applicant has not obtained permission for undertaking the travel to appear in the Court.

4. We have gone through the pleadings and materials placed on record. According to the Rule 702(2) of the Indian Railway Establishment Code Vol.I, after the railway servant is acquitted in a case, which he has defended in his official capacity, he is entitled to get reimbursed the litigation expenses and expenses connected thereto. In this case, it is not in dispute that the applicant was prosecuted for he was the Assistant Commercial Manager and Special Officer in connection with the sale of Dal under the provisions of Prevention of Food Adulteration Act, 1954. It is also brought out by Annexure A2 that the applicant was acquitted. The contention of the respondents that the applicant was acquitted only because the benefit of doubt was given to him and therefore he was not entitled to claim reimbursement of litigation expenses is not covered by any rule or instructions. The rules would go to show that the applicant is entitled to the reimbursement. Further, on a reading of the judgement of the learned Magistrate, one is left with no doubt that the acquittal of the applicant was an honorable acquittal. The applicant, therefore, is entitled to the counsel fee in connection with the defence of CC.No.11009/92. Regarding the TA/DA and other expenses incurred by the applicant in connection with the litigation, the contention of the respondents that the applicant did not take permission is belied by Annexure A-11 order dated 6-7-1995 which proves that the applicant had sought permission for undertaking the journey to appear in the Court which had been granted by the competent authority asking him to

treat that days as 'on duty' and not as 'LAP'. Under these circumstances, the denial of the claim made by the applicant by the respondents cannot be sustained.

5. In the light of what is stated above, we dispose of the Original Application directing the respondents to consider the claim of the applicant for reimbursement of counsel fee and other litigation expenses including the amount spent by him for the journey and leave salary, if necessary after getting clarifications from the applicant, to the extent admissible as per rules. The above direction shall be complied with and the amount paid to the applicant as expeditiously as possible, at any rate within a period of two months from the date of receipt of a copy of this order. There is no order as to costs.

Tuesday, this the 4th day of March, 2003


T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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A.V. HARIDASAN
VICE CHAIRMAN