

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 42 of 1996

Thursday, this the 20th day of March, 1997

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. P. Raghunath,
S/o P. Sreenivasa Rao,
Law Assistant/Law Branch,
Southern Railway, Headquarters,
Madras-3
residing at No.6, Bharathy Nagar,
1st Street, T. Nagar,
Madras - 600 017 .. Applicant

By Advocate Mr. T.C. Govindaswamy

Versus

1. Union of India through
the General Manager,
Southern Railway, Headquarters Office,
Park Town PO, Madras-3
2. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division, Trivandrum-14
3. The Divisional Personnel Officer,
Southern Railway,
Trivandrum Division, Trivandrum-14
4. Assistant Personnel Officer (Court),
Ernakulam Junction Railway Station,
Ernakulam. .. Respondents

By Advocate Mr. Thomas Mathew Nellimoottil

The application having been heard on 20th March, 1997,
the Tribunal on the same day delivered the following:

ORDER

The applicant seeks to declare that the refusal
on the part of the respondents to pay him daily allowance
admissible under Rule 1647 of the Indian Railway Esta-
blishment Code Vol.II is arbitrary and illegal, and to

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direct the 2nd and 3rd respondents to arrange to pay him the daily allowance admissible to him for a period of 180 days.

2. The applicant, while working as Law Assistant in the Divisional Office, Southern Railway, Trivandrum, was transferred and posted to work under the control of the Assistant Personnel Officer (Court), Ernakulam as per A-1 order. The applicant joined at Ernakulam on 30-8-1994. The applicant says that he is entitled to daily allowance for the first 180 days of his stay away from the permanent headquarters, ie. Trivandrum since his transfer was temporary and that he submitted his daily allowance/travelling allowance journals for the months of September, October, November and December 1994 to the 3rd respondent. He also says that subsequently he submitted his daily allowance claim for the months of January 1995 and February 1995. There was no response. The applicant completed a period of 180 days by the end of February 1995.

3. Respondents say that the post of Law Assistant was operated at Ernakulam even prior to the posting of the applicant as Law Assistant, that the transfer of the applicant from Trivandrum to Ernakulam was planned on a permanent basis, that while issuing A-1 order inadvertantly the word "temporarily" was used there, that the applicant's salary was claimed at Ernakulam and not at Trivandrum, and that Ernakulam was the headquarters of the applicant.

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4. As per Rule 1647 of the Indian Railway Establishment Code Vol.II, daily allowance is admissible during temporary transfer in full for the first 180 days. A-1 is the order as per which the applicant was transferred from Trivandrum to Ernakulam where it is clearly stated that the applicant was transferred and posted to work under the control of Assistant Personnel Officer (Court) at Ernakulam temporarily with immediate effect. As per A-4, the applicant requested for payment of the allowances due to him since he was temporarily transferred from Trivandrum to Ernakulam. A-4 is dated 17th of April 1995. No reply has been sent to A-4 to the applicant by the Divisional Railway Manager, Trivandrum to whom A-4 was addressed. If the case of the respondents that it is due to an inadvertant mistake the word "temporarily" was used in A-1, on receipt of A-4 that could have been brought to the notice of the applicant and his claim could have been rejected by a written order. That has not been done. Only in the reply statement, for the first time, the stand is taken that in A-1 the word "temporarily" was used due to an inadvertant mistake. It is not easy to accept since to the representation made by the applicant no reply has been given stating this ground.

5. Learned counsel appearing for the respondents argued that the applicant has not claimed daily allowance in his travelling allowance journal produced as R-1. R-1 is only for the period from 27-10-94 to 30-10-94.

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According to the respondents, the applicant has not claimed daily allowance for the first 180 days of his transfer to Ernakulam. The stand of the respondents has been denied by the applicant in the rejoinder filed by him.

6. According to the learned counsel for respondents, R-1 would go to show that the applicant's headquarters was at Ernakulam and therefore it was not a temporary transfer. It is the admitted case that the applicant joined at Ernakulam in compliance with the A-1 order on 30-8-1994. From A-5 it is seen that he was relieved from Ernakulam on 13-12-1995. So, during the period covered by R-1 the applicant was working at Ernakulam. When he officially travels from Ernakulam to Trivandrum he is entitled to claim his travelling allowance and other allowances admissible. In R-1 it is shown that he has travelled from Ernakulam to Trivandrum and back. This will only go to show that the applicant started his journey from Ernakulam and will not go to show that he was having his posting on a permanent basis at Ernakulam.

7. Learned counsel for the respondents drew my attention to the instructions (1) and (2) of VIII of Rule 1643 of the Indian Railway Establishment Code Vol.II wherein it is stated that the transfer grant and packing allowance will not be admissible for temporary transfers not exceeding 180 days. There is no quarrel on this aspect. The transfer of the applicant has exceeded 180 days. So the said provision will not come to the rescue of the respondents in this case.

8. According to the respondents, the post of Law Assistant was operated at Ernakulam even prior to the posting of the applicant as Law Assistant. There is no material produced in support of the same.

9. The fact that the salary of the applicant was drawn at Ernakulam and was disbursed to him will not make his transfer a permanent one, instead of being a temporary one. There is no case for the respondents that the applicant is the drawing officer. That being so, his salary was drawn by the drawing and disbursing officer. Whether rightly or wrongly the drawing and disbursing officer has drawn the applicant's salary at Ernakulam. That cannot take away the right of the applicant as provided under Rule 1647 of the Indian Railway Establishment Code.

10. Respondents have taken a stand that official accommodation was allotted to the applicant and therefore his transfer was not a temporary transfer. It is the admitted case of the respondents that the applicant occupied the official accommodation allotted to him on 1-3-1995. That being so, it is on completion of the period of 180 days from the date of his joining at Ernakulam. So, that cannot alter the position. According to the respondents, employees on temporary transfer are not eligible for provision of official accommodation, but it is pertinent to note that the applicant was not provided with an official accommodation before expiry of 180 days but only on completion of 180 days. So, it is

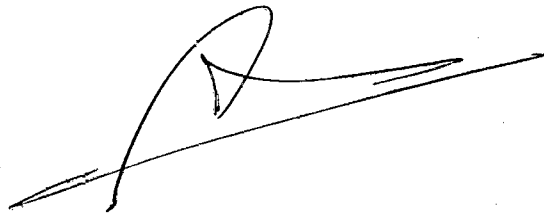
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only to be taken that his transfer was, as stated in A-1, temporary for the purpose of invoking Rule 1647 of the Indian Railway Establishment Code to enable the applicant to draw his daily allowance. Hence, the contentions raised by the respondents cannot be accepted.

11. Accordingly, the Original Application is allowed declaring that the refusal of the respondents to pay the applicant the daily allowance admissible to him under Rule 1647 of the Indian Railway Establishment Code Vol.II is illegal. The 2nd and 3rd respondents are directed to arrange to pay the applicant the daily allowance admissible to him for a period of 180 days from 30-8-1994 as per rules. No costs.

Dated the 20th of March, 1997



A.M. SIVADAS
JUDICIAL MEMBER

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LIST OF ANNEXURES

1. Annexure A1: A true copy of the Office Order bearing No.46/94/PG of 18.8.94 issued by the third respondent.
2. Annexure A4: A true copy of the appeal dated 17.4.95 submitted by the applicant to the second respondent.
3. Annexure A5: A true copy of the Office Order No.V/p 535/XII/Law Assistant dated 13.12.95 issued by the third respondent.
4. Annexure R1: True copy of the travelling allowance journal submitted by the Applicant.

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