

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 13.02.2015.

Pronounced on 13th March 2015

Original Application No.318/2011

Hon'ble Ms. Jayati Chandra, Member (A)

S.M.S. Saxena, aged about 75 years son of late B.S. Saxena, Rtd. Law Officer, North Eastern Railway, Gorakhpur resident of 121, Balaganj Railway Colony, Jal Nigam Road, Lucknow.

-Applicant.

By Advocate: Applicant in person.

Versus.

1. Union of India through Secretary, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
2. The General Manager, North Eastern Railway, Gorakhpur.
3. The FA & CAO (Pension) North Eastern Railway, Gorakhpur.
4. Dy. Chief Personnel Officer (Gazetted) North Eastern Railway, Gorakhpur.

-Respondents.

By Advocate: Sri D.K. Mishra.

ORDER

Per Ms. Jayati Chandra, Member (A)

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):-

- (i). to direct the respondents to pay fixed medical allowances as also arrears as per recommendation of Vth Central Pay Commission accepted and circulated by Railway Board vide letter dated 21.04.1999 filed as Annexure No.9 to this O.A.

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(ii). To direct the respondents to correct address in the PPO (TR No.NE/1016/209833 dated 31.8.2010) and to issue revised PPO indicating fixed medical allowance payable per month @ Rs. 300/- per month.

(iii). To direct the Respondents to pay Rs.4000/- towards cost of registered correspondence made with the Respondents.

(iv). To provide cost of the application as since last 11 years the applicant has been making representations/request for payment of fixed medical allowance of General Manager (P) N.R. Railway, Gorakhpur and ultimately ministry of Railways decided matter vide letter dated 6.10.2010 (Annexure No.A-17).

(v). to pass any such order which are found just and proper under the circumstances of the case."

2. The facts of the case are that the applicant had retired as Law Officer, North Eastern Railway w.e.f. 31.08.1994. During his service period, he was allotted Railway Quarter No.133/B Dairy Railway Colony, Gorakhpur, which is within 2.5 Kms. Radius of North Eastern Railway, L.N. Misra Hospital, Gorakhpur. He had vacated the quarter prior to his retirement. Accordingly, no licence fee was deducted and he was paid H.R.A. as per the salary slips for the month of May, June, July and August, 1994. He had shifted to House No.G-2/36 of Railway Vihar, situated at least 8 Kms. from N.R. Railway L.N. Misra Hospital, Gorakhpur. He shifted from Gorakhpur to Lucknow in the year 1999. He had applied for empanelment as Legal Advisor to Railway Board by his application dated 04.02.1999 (Annexure A-5). He was empanelled in 2000 as Railway Advocate vide order dated 30.11.2000 (Annexure A-6). Prior to shifting form

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Gorakhpur to Lucknow with all luggage and family, the applicant went to the office of Dy. C.P.O./Gaz. and informed the dealing clerk by the name of Shri Shamim that he had shifted to Lucknow and is present residential address would be 121, Balaganj Railway Colony, Jal Nigam Road, Lucknow so that in future all the applications/letters may be sent to the aforesaid address. After few months the applicant went to Gorakhpur for drawing his pension from Union Bank, Geeta Vatika Branch, Gorakhpur. He again went to the CPOs office and also met with officers of Personnel Department to enquire if there is any letter and or document for him. As Shri Shamin was not available the applicant met a lady dealing clerk, who informed him that there is nothing for him. Once again he gave his Lucknow address on the plain paper. He got his Gas Connection transferred from Gorakhpur to Lucknow. His Medical Care No.1312 was also transferred vide letter No.Ch/84/1 dated 12.04.2003 and he was attached to North Eastern Railway, Badshah Nagar Railway Hospital, Lucknow. Railway passes were similarly transferred vide GM/Commercial/N.E. Rly/Gorakhpur No.Va/204/1 Coml. Pass dated 31.01.2007 to D.R.M., North Eastern Railway, Lucknow. His pension drawing Bank i.e. Union Bank of India, Geeta Vatika Branch, Gorakhpur was also transferred to Central Bank of India, Lucknow as per his request letter dated 15.03.2005. The acknowledgement letter was sent at his Lucknow address i.e. 121, Balaganj Railway Colony, Jal Nigam Road, Lucknow. A fixed Medical Allowance of Rs.100/- per month to the Railway Pensions/Family Pensioner Holders etc. who are residing outside the jurisdiction of certain identified Hospitals and Dispensaries were granted by Railway Board letter dated

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21.04.1999 as per the Recommendations of 5th Central Pay Commission grant. As per General Manager (I), North Eastern Railway, Gorakhpur Circular No.E/171/2/PF-1 (char) dated 28.04.2000 (Annexure A-10) a heart disease is defined as a chronic disease. The applicant is a patient of Heart disease therefore as per the provision of Railway Board's letter dated 21.04.1999, he is entitled to Rs.100/- per month Medical Allowance as his place of residence is out the jurisdiction of the named hospitals and at the same time he is allowed out-door facilities of the treatment of his Heart disease. The applicant represented vide letter dated 17.04.2006 that he was patient of chronic heart disease, hence he is entitled for fixed medical allowances as also for outdoor medical treatment. He sent all medical certificates issued by S. Rly Perambur and S.G.P.G.I. but when he again visited Gorakhpur the concerned dealing clerk told that certificates sent by the applicant are not traceable. He resent the same vide his letter dated 16.08.2008 (Annexure A-13). The General Manager (P), North Eastern Railway, Gorakhpur vide letter dated 16.6.2008 (Annexure A-14) informed him that the applicant should get his address changed to his Lucknow address as in his recorded address is 133/B Dairy Railway Colony, Gorakhpur. The applicant submitted an application for change of address alongwith the copy of undertaking in original on 7/12.08.2008 (Annexure A-12). The applicant also represented to the Secretary, Railway Board, New Delhi and Chairman, Railway Board, New Delhi vide representations dated 12/18.11.2009 and 15.07.2010. He record Board's letter dated 26.02.2010. The copy of Railway Board's letter dated 16.02.2010 is annexed at (Annexure A-16). The Railway Board vide letter dated

06.10.2010 informed that the matter has been considered and in view of applicant's residential address, as given in the PPO is different to the address the applicant is now residing at the applicant should apply for change of address in the necessary documents and then apply for Fixed Medical Allowance. The applicant sent several Regd. Letters dated 14.09.2010 (Annexure A-19) reminder dated 21.10.2010 (Annexure A-20), 18.11.2010 (Annexure A-21) 30.11.2010 (Annexure A-22) 12.01.2011 (Annexure A-23), 26.04.2011 (Annexure A-24) etc. with remedy. Hence, this OA.

3. The respondents have refuted the claim of the applicant by filing counter reply stating therein that vide General Manager (P), North Eastern Railway, Gorakhpur letter dated 21/22.12.2011 (Annexure-CR-3) the applicant was informed about the sanction of his change of address from Gorakhpur to Lucknow alongwith sanction of medical allowance at the rate of Rs.100/- per month from 27.06.2008 and Rs.300/- per month (revised rate) from 01.09.2008 and also sanction of OPD facility to the applicant. The basic ban to the sanction of the medical allowance has been on account of the applicants' failure to get his permanent address of residence as shown in his PPO to Lucknow from Gorakhpur. Further, the respondents have taken a plea that as per the Railway Board's reply dated 26.02.2010 given the sanctioning order and the applicant preferred the OA in August, 2011, which is beyond the prescribed limit of limitation without explaining the delay as is required under Administrative Tribunals Act, 1985.

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4. The applicant has filed Rejoinder reply rebutting the Counter Affidavit more or less reiterating the same points as taken in O.A.

5. I have heard the learned counsel for both the parties and perused the entire material available on record.

6. By means of this O.A., the applicant has basically sought for implementation of Railway Board letter dated 21.04.1999 by which the Recommendations of 5th Central Pay Commission for grant of Fixed Medical Allowance of Rs.100/- per month was allowed to the Railway Pensions/Family Pensioner Holders etc. who are residing outside the jurisdiction of certain identified Hospitals and Dispensaries. It is seen from the relief clause that he has not prayed as to the date from which he is claiming such allowance. It is only mentioned in the OA that he making representations/requests for the last eleven years for payment of the Fixed Medical Allowance. Section 21 of the Administrative Tribunals Act, 1985 provides only 1 ½ years for approaching to the Tribunal for redressal of grievance from the date of its occurrences. The applicant has approached this Tribunal only in the year 2011 when he is claiming relief with effect from 1999/2000. His reason for holding the interim period as not falling under Section 21 is the number of oral requests /representations etc. that he is stated to have made. **The Hon'ble Supreme Court in S.S. Rathore vs State Of Madhya Pradesh decided on 6 September, 1989 reported in 1990 AIR 10, 1989 SCR Supl. (1) 43 has held that repeated representations does not extend the**

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period of limitation. The Fixed Medical Allowance is not a statutory allowance and therefore he cannot claim that it is recurring cause of action.

7. He has been allowed Fixed Medical Allowance vide General Manager (P), North Eastern Railway, Gorakhpur letter dated 21/22.12.2011 (Annexure-CR-3) subsequent to the sanction of his change of address from Gorakhpur to Lucknow alongwith sanction of medical allowance at the rate of Rs.100/- per month from 27.06.2008 and Rs.300/- per month (revised rate) from 01.09.2008. Whatever may have the place where the applicant may have stayed in for various lengths of time he has not produced any paper to show that his address was wrongly entered in his PPO. The PPO was issued to him at the time of his retirement in August, 1994. He was never protested that this address was wrong. The recorded address was Railway Quarter No.133/B Dairy Railway Colony, Gorakhpur, which is within 2.5 Kms. Radius form North Eastern Railway, L.N. Misra Hospital, Gorakhpur. In his narration of facts the applicant has tried to demonstrate that he is not actually residing at this address from May, 1994 onwards by submitted the salary slips for the month of May, June, July and August, 1994. The issue is to decide here is not as to whether the HRA has been claimed on the basis of actual shifting or otherwise but the facts remains that in the pension papers the applicant had himself indicated his address as Railway Quarter No.133/B Dairy Railway Colony, Gorakhpur and this fact has not been denied. Moreover a retired man is free to move for varying periods of time to various addresses. But the employees can take only his recorded address as the place where is normally

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resides. Infact one of his letter dated 04.02.1999, he has used the following address i.e. Railway Quarter No.171/A, Munwarbagh, Alambagh, Lucknow and thereafter in the letter dated 30.11.2000, he has used the address i.e. Railway Quarter No.133/B Dairy Railway Colony, Gorakhpur. In so far as the respondents are concerned they can only go by the same. The change of his postal/permanent address was effect only in 2008 after completing all formalities. He cannot now agitate for a relief with effect from 1999 at this belated stage.

8. In view of the above, the O.A. is dismissed on the ground of limitation as well as on merits also. No order as to costs.


(Ms. Jayati Chandra)
Member (A)

Amit/-