

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH.

Original Application No. 127/92

~~Transfer Application No. 127/92~~

Date of decision 22.6.93

Shri Panicker Gangadher Baby Petitioner

Mrs. K.U. Nagarkatti Advocate for the Petitioner

Versus

Union of India and others Respondent

Shri Ravi Shetty. Advocate for the Respondent(s)

Coram :

The Hon'ble Shri A.B.Gorthi, Member (A)

The Hon'ble Shri V.D. DESHMUKH, Member (J)

1. Whether the 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. Whether it needs to be circulated to other Benches of the Tribunal ?

(A.B.GORTHI)  
MEMBER (A)

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 127/92

Shri Panicker Gangadher Baby

... Applicant.

V/s.

Union of India through  
The Secretary  
Ministry of Defence,  
Government of India,  
New Delhi.

Director General of Ordnance Service  
(DOOS) Army Headquarters,  
DHQ PO, New Delhi.

Major General  
Army Ordnance Corps,  
HQ Southern Command,  
Pune.

The Controller of Defence Accounts,  
Southern Command,  
Pune.

The Commandant,  
Ordnance Depot,  
Talegaon- Dabhade,

The Assistant Controller of Defence  
Accounts, Officer of the  
ACDA -in-Charge,  
AAO (CDASC) Dehu Road,  
Pune.

... Respondents.

CORAM: Hon'ble Shri A.B. Gorthi, Member (A)  
Hon'ble Shri V.D. Deshmukh, Member (J)

Appearance:

Mrs. K.U. Nagarkatti, counsel  
for the applicant.

Shri Ravi Shetty for Shri  
R.K. Shetty, counsel for  
the respondents.

ORAL JUDGEMENT

Dated: 22.6.93

¶ Per Shri A.B. Gorthi, Member (A) ¶

The applicant who was on temporary duty to Sri Lanka had claimed TA/DA for the period of his stay there and the same was paid. Later on, the authority concerned found that the payment of TA/DA to the applicant was not in accordance with the instructions. The amount paid to the applicant was directed to be refunded. When the application came up for admission, an interim order was passed staying the recovery.

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Heard Mrs. Nagarkatti, counsel for the applicant and Shri Ravi Shetty, counsel for the respondents. After hearing counsel for both the parties, we find that the short question involved in this case is whether the applicant had enjoyed the benefit of free boarding and lodging during his stay in Sri Lanka. As per the extant instructions, a Government employee proceeding on temporary duty to Sri Lanka would be entitled to TA/DA only when he was not provided with free boarding and lodging. It is the applicant's contention that during his stay in Sri Lanka he was not provided with free boarding and lodging. Accordingly he submitted the required detention certificate which did not state that he was provided with free boarding and lodging facility. Subsequently, with a view to provide further clarification in the matter, a fresh detention certificate was produced which categorically stated that the applicant was not provided with free boarding and lodging.

The respondents in their reply affidavit stated that the applicant being a Civilian in Defence service was subject to field service. When he proceeded to Sri Lanka on temporary duty, he was given free boarding and lodging. It is however contended in the reply affidavit that the detention certificate initially given by the applicant was correct, and in that did not state that the applicant was provided with free boarding and lodging. The detention certificate issued subsequently, after a period of three years stated that he was not provided with free boarding and lodging, but the said certificate was wrongly issued by the officer concerned. In view of these contentions, what is required to be decided

clearly and without ambiguity is whether or not the applicant was provided with free boarding and lodging. The period for which the claim pertains is from 21.7.88 to 28.10.88. By means of an additional affidavit the respondents had brought to our notice that the matter was subjected to one man enquiry. Perusal of enquiry report shows that the officer held the enquiry very casually and concluded it without a definite view. Relevant portion of the enquiry report may be extracted below:

" ... In view of this, it is inferred that Chargeman Shri P.G. Baby and his team might have been provided free boarding and lodging facilities.

From the complete facts and circumstances of this case it is inferred that Chargeman Shri PG Baby was issued correct certificate initially (for the first time immediately after completion of their team duties with both the DOUs) wherein there is no mention that they were not provided with boarding and lodging. The detention certificates issued to both the DOUs after a long gap of 3 years, appear to have been incorrectly issued by the DOUs, inadvertantly, in good faith and by the officers not fully conversant with the complete facts/details of the case especially the aspect that the whole team was provided with the boarding and lodging facilities. The detention certificates issued second time after a lapse of 3 years was obtained by Shri PG Baby under the facts explained in the preceeding pragraphs..."

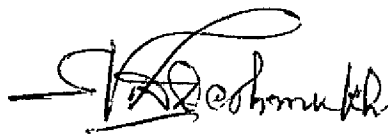
We are not happy with the manner in which the one man enquiry was conducted . The Enquiry officer should have examined the applicant and the officials who gave the detention certificate in the first instance and also the officer who gave the detention certificate subsequently after a period of 3 years. Moreover, as

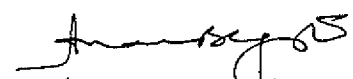
: 4 :

the applicant's character and reputation were involved, the Enquiry Officer should have given him an opportunity to be heard. As this had not been done, we consider that it would be just and proper to dispose of the application with a direction to the respondents to hold an additional enquiry, wherein the officers who issued the detention certificates should be examined and the applicant should be allowed to be present throughout the enquiry, to cross-examine the witnesses and make his own statement. It is needless to say, that should the enquiry officer hold that the applicant was provided with free boarding and lodging during his stay in Sri Lanka, he would not be entitled to any TA/DA and the respondents will be justified to pass an order to recover the amount already paid.

The respondents shall comply with the above directions of the Tribunal within three months from the date of communication of the order. Till the final decision of the enquiry officer, no recovery should be made for the amount of TA/DA already paid.

Application is disposed of with the above directions with no order as to costs.

  
(V.D. DESHMUKH)  
MEMBER (J)

  
(A.B. GORTHI)  
MEMBER (A)

NS

BA 127192

(11)

18/10/93

By virtue of the powers vested in me in para 1(1) of the CAT Notification No. 13/14/91-JA dtd. 18/2/1992. I constitute a Bench consisting of Shri M.Y. Priolkar, M(A) and Mrs L. Swaminathan, M(J), for deciding the Review Petition No. 100193

2. The Said Bench will take up the matter for consideration on 8/11/92.

Notice be issued to parties.

(MS. DESHPANDE)  
VICE-CHAIRMAN

Notice issued to both sides on 27/11/93.

27/11

Per Tribunal  
Applicant in person / by  
Advocate / Respondent by  
Council.  
The matter adjourned to  
for order

Date: 8/11/93  
Ms K. Y. Nagar  
R. K. Shetty  
20/12/93

orders of  
Hon'ble VC  
on constitution of  
bench for orders on  
RP 100/93 are  
submitted.

23/12/93

Dy. Registrar

Dated: 6.1.94.

Mrs. Nagarkatti for the  
applicant. Mr. R. K. Shetty for the  
respondents.

Adjourned to 17.2.94.

Notice is issued to  
both the sides on  
23-12-93  
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(Lakshmi Swaminathan)  
M(J)

(N. K. Verma)  
M(A)