

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 384/97

29.10.98
Date of Decision:

D.K.Upadhyay & Ors.

.. Applicant

Shri G.K.Masand

.. Advocate for
Applicant

versus

Union of India & Ors.

.. Respondent(s)

Shri Karkera for Shri P.M.Pradhan Advocate for
Respondent(s)

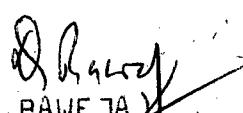
CORAM:

The Hon'ble Shri D.S.Baweja, Member (A)

The Hon'ble

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?


(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA NO.384/97

pronounced this the 29th day of October 1998

CORAM: Hon'ble Shri D.S.Baweja, Member (A)

1. Shri D.K.Upadhyay,
residing at Room No.2,
Dhonai Yadav Chawl, J.Nagar,
Sai Baba Road, Khar (East),
Mumbai-400 051.
2. Shri R.R.Thakur,
residing at Room No.103,
Satyadev Darshan,
Near Satyanarayan Temple,
Kharigaon, Bhayander (East).
)
3. Shri O.M.Sharma,
Santosh Nivas, Room No.3.,
Shiv Tekadi Caves Road,
Jogeshwari (East),
Mumbai-400 060.
4. Shri A.S.Sundaram,
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Jagajivanram Chawl,
Dharavi X-Road,
Mumbai-400 017.
5. Shri V.P.Rahate,
residing at 101/D,Laxmi
Palace Co.Op.Housing Society,
Sopara Road, Near Cheda Rice Mill,
Nala Sopara (West), Vasai,
Dist. Thane.

6. Shri S.R.Ram,)
residing at GNMB 42 2/3(C),)
Uttar Bharatiya Society Chawl,)
Jagjivanram Nagar, Kala Killa,)
Dharavi Road, Mumbai-400 017.)

7. Shri A.G.Ramteke,)
B-15, Sun Shine Building,)
Sudarshan Cross Lane,)
Navghar Road, Bhayander (East),)
Dist.Thane.)

8. Shri G.N.Dube,)
residing at C/o.Block No.A-408/)
816, Subhash Tekdi, Ulhasnagar-4.)

9. Shri V.R.Patni,)
residing at 5/40, C.V.Chawl,)
Hanuman Lane, Lower Parel,)
Mumbai-400 013.)

10. Shri H.R.Chouhan,)
residing at Shiv Shankar Chawl)
Committee, Shiv Chhatrapati)
Nagar, Behind Police Station,)
Surya Nagar, L.B.S.Marg,)
Vikhroli(West), Mumbai-400023.)

11. Shri S.D. Gedam,)
residing at S.G.Gaikwad Colony,)
15/8, Jari Mari Nagar,)
Kolsewadi, Kalyan(East),)
Opp.Janta Sahkari Bank,)
Dist.Thane.)

12. Shri C.T.Sagbhor,
residing at Sunita Colony,
Vijay Nagar, Room No.6,
Aurai Tisgaon, Kalyan (East),
Dist. Thane.

13. Shri S. K. Mishra,
residing at Sanjay Nagar,
Vikhroli Park Site,
Vikhroli (West),
Mumbai-400 079.

14. Shri L. K. Kasale,
residing at Gharkul Co. Op. Hsg.
Society Ltd., Plot No 173/1,
Sector-1, Charkop, Khandivali (W),
Mumbai-400 067.

15. Shri R.R. Rajbhar,
residing at Sawla Building No.4,
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Mumbai-400 012.

16. Shri A. K. Yadav,
residing at Trimurti Niewas,
Room No.3, Tisgaon Naka,
Poona Link Road, Kalyan (East),
Dist. Thane.

17. Shri S. G. Yadav,
S/o. Ghura Pahalvan, residing
at Ghura Pahalvan Chawl,
Room No.1, Behrambaug, S.V. Road,
Jogeshwari (West), Mumbai-400102.

18. Shri V.J.Bhandirge,)
residing at Gorai II,)
Shri Sai Siddhi Co.Op.)
Housing Society Ltd., Plot)
No.124/D-1,RSC-27, Municipal)
'R' Ward, Gorai, Borivali(W),)
Mumbai-400 092.)

19. Shri S. K. Sangle,)
residing at 317/New Jaiphalwadi,)
Forget Sheet, Tardeo,)
Mumbai-400 036.)

By Advocate Shri G.K.Masand)
V/S.)
Applicants

1. Union of India, through the)
Secretary to the Government)
of India, Department of)
Telecom, Sanchar Bhavan,)
New Delhi.)

2. Chief General Manager,)
Maharashtra Telecom Circle,)
G.P.O. Building, Mumbai-400 001.)

3. Chief Superintendent,)
Central Telegraph Office,)
Mumbai-400 001.)

4. Accounts Officer,)
Central Telegraph Office,)
Mumbai-400 001.)
Respondents.

By Advocate Shri S.S.Karkera for
Shri P.M.Pradhan

O R D E R

(Per: Shri D.S.Baweja, Member (A)

This application has been filed jointly by 19 applicants who are at present appointed as Junior Telecom Officer in the Office of Chief Superintendent, Central Telegraph Office, Mumbai (Respondent No. 3). The applicants while working as Telegraphist/Telegraph Assistant appeared in the competitive Examination for the post of Junior Telecom Officer and were declared successful. The applicants were sent for Phase-I pre-promotional training at Regional Telecom Training Centre (RTTC) at Secunderabad. Applicants No. 1 to 14 were sent for training from 14.8.1995 to 29.12.1995 and Applicants No.15 to 19 were sent for training from 11.9.1995 to 29.12.1995. After completion of this training, the applicants were sent for field training. After completion of field training, the applicants were deputed for Phase-II training at Secunderabad from 29.1.1996 to 17.5.1996. The applicants were paid advance travelling allowance and daily allowance for the entire period of training of both the Phases at the rate of 100% daily allowance. The applicants submitted the bills for the Phase-I training to cover the advance payment and the same were also allowed by the concerned authority. However, when the applicants submitted the bills for the advance of the Phase-II training, they came to know that decision has been taken to settle the D.A. bills of the applicants at half the rates instead of full rate. The applicants made identical representations on 1.1.1997. These

representations were replied by the respondents as per identical letters dated 27.2.1997 informing that the payment of daily allowance shall be regulated as per Govt. of India's orders No. 3 below S.R. 164 for both the periods of training. Subsequently, as per identical orders dated 21.3.1997, the applicants have been advised individually of the amount to be recovered. The applicants again represented the matter to higher authorities as per their representations dated 5.3.1997 but did not get any response to the same. Thereafter, the applicants have filed the present OA. jointly on 22.4.1997 seeking the following reliefs : -

(a) to quash and set aside the orders dated 27.2.1997 and 21.3.1997, (b) to hold and declare that the applicants are entitled to full D.A. for their training periods of Phase-I and Phase-II training.

2. The applicants have contended that all along for several years the trainees at the Training Institute at Secundarabad have been paid full allowance and it is for the first time in case of the applicants the payment at half the daily rate is being made after settling the claim at full rate for the Phase-I training. The applicants further allege that the trainees deputed both from Maharashtra Circle as well as from other Circles have been paid full daily rate and no recoveries have been made and therefore the applicants have been discriminated. The applicants also contend that the provisions of Order No. 3 below S.R. 164 are not applicable to the case of the applicants as no free boarding and lodging facility is available at the training centre at Secundarabad.

The applicants have paid for the hostel facility. The Mess was run by the trainees themselves on cooperative basis and the entire expenses were shared by all the trainees equally. Further, the Training Centre was at a distance of 25 kms. away from the hostel and therefore the applicant had to incur expenditure for taking lunch and afternoon tea. The applicants, therefore, pray that they are entitled for the payment of daily allowance at full rate and no recoveries need to be effected from the applicants as contended as per the impugned orders.

3. The respondents have filed the written reply. The respondents submit that the case of the applicants is not covered by the provisions of free boarding and lodging facility as only 1/4th of daily allowance is permissible. The case of the applicants is covered by the facility of "Mess" being available to be run on cooperative basis." The Government of India's order No. 3 below S.R.164 at the end clearly states that the definition of lodging facilities and boarding would also include the cases where Mess is available at the centre and is run on cooperative basis. Under such facilities, the daily allowance is admissible at full rate for first 30 days and at half rate for the next 150 days. The facility of running cooperative mess is available at training centre at Secundarabad and therefore the applicants are entitled for payment of daily allowance at half the rate after the first 30 days. The respondents further submit that the claim of the applicants for the first

phase was accepted at full rate erroneously as the clarification issued by the department as per order dated 10.10.1991 had not been taken into consideration. However, at the time of considering the claim for the Phase-II training, this Circular was taken note of and it was found that over-payment had been done to the applicants. In view of this, the impugned orders dated 27.2.1997 and 21.3.1997 had been issued to all the applicants. The respondents/further stated that the case of the applicants was specifically referred to the Department of Telecom, New Delhi. The Department of Telecom in consultation with the Ministry of Finance has again clarified as per order dated 19.1.1998 that where the Mess facility is available which is being run on cooperative basis, full daily allowance is admissible for the first 30 days only and thereafter half D.A. is admissible for the next 150 days in terms of Govt. of India's Order No. 3 below S.R. 164. Keeping these facts in background, the respondents plead that the claim of the applicants had been rightly settled by granting the daily allowance as admissible as per the rules and applicants have no case. It is also the case of the respondents that the applicants have not challenged the provisions of any of the rules relied upon by the respondents in settling the claim of the applicants.

4. The applicants have filed rejoinder reply controverting the contentions of the respondents in the written reply and maintaining their stand with regard to the entitlement of full rate daily allowance put as forward in the original application.

5. As per the order dated 25.4.1997, it was directed ~~not~~ to make any recoveries from the applicants in terms of the order dated 21.3.1997. This interim order was extended from time to time and is continued till the pronouncement of the order.

6. Heard the arguments of Shri G.K. Masand, learned counsel for the applicants and Shri S.S. Karkera for Shri P.M. Pradhan, learned counsel for the respondents.

7. From the rival contentions, it is noted that the basic facts are not in dispute. The applicants were paid daily allowance on full rate as advance for both the phases of training. For the first phase of training, the bill submitted to cover the advance payment had been passed by the respondents. Only when the bills for the Phase-II training/being considered, of overpayment was detected, the issue by the respondents. The main plea of the respondents is that the applicants are not entitled for payment of daily rate ~~at~~ full rate in terms of the provisions of Government of India's Order at Sr.No. 3 below S.R.164. The respondents submit that the Department of Telecommunications had clarified the matter with regard to the payment of daily allowance in the training institute as per order dated 10.10.1991 but the same was erroneously not taken into account while passing the bills for Phase-I of training. The respondents also submit that the case of the applicants was again referred to the ~~Dept.~~ of Telecommunication and as per the letter dated 19.1.1998, R-4 with the Written Reply, it has been again clarified that the payment of daily allowance is to be governed by the Govt. of India's Order No. 3 below S.R.164. The

respondents' stand is that the facilities for Mess on cooperative basis are available at training centre at Secundarabad and therefore in terms of the rules as referred to earlier, the applicants are entitled for payment of daily allowance ~~at~~ ^{only} full rate for the first 30 days ~~and~~ half rate for the next 150 days. The applicants, on the other hand, refute the claim of the respondents with regard to provision of messing facility on cooperative basis. The case of the applicants is that the Mess has been arranged by the trainees for themselves and ~~all~~ the purchase of stocks and the wages of the Mess workers ~~have been~~ made by the trainees. Further, it is also submitted that the place of training is about 25 kms. away from the ~~hostel facilities~~ and the applicants had to avail the facility of lunch and afternoon tea from the market for which they had to pay heavy charges, as it was not possible to come back to the ~~Hostel~~ and take lunch in the Mess. Keeping in view the rival contentions and the provisions of rule as brought out by the respondents, the main issue is whether the facilities of Mess on cooperative basis had been provided in the training institute at Secundarabad? In case the facilities are provided, then in terms of the Govt. of India's Order No. 3 below S.R.164, the applicants are entitled for payment of ~~daily~~ ^{only} allowance ~~at~~ half the rate after the first 30 days. ^{however} The respondents have not brought on record any details with regard to the facilities of messing on cooperative basis provided at the training centre at Secundarabad.

The Government of India's Order No. 3 below S.R.164 is also silent as to the definition and scope of the provision of Messing on cooperative basis. The submissions made by the applicants with regard to the arrangement for Messing available at training centre have not been controverted by the respondents. The only remark made by the respondents for Para 4.6 in the original application is reference to the letter dated 29.12.1995 from the Principal wherein it is mentioned that all the trainees have paid the hostel and mess charges. I have carefully gone through this letter and find that in the face of the submissions made by the applicants, the mere statement that the Mess charges paid by the trainees does not confirm that the mess facility on cooperative basis as envisaged by the Govt. of India's Order No.3 below S.R.164 had been provided. From the submissions made by the respondents, I find that the respondents are at pains to refer to the rules and the clarifications issued by the Department of Telecommunications, no on record effort has been made to bring out as to the facilities provided for mess on cooperative basis at the training centre. The respondents have not brought out any departmental instructions laying down the details of arrangement the mess on cooperative basis as envisaged in the Govt. of India's Order No. 3. The submissions made by the applicants are also not very explicit as to how the Mess was run by the trainees. It is obvious that the trainees could manage the Mess on cooperative basis if the infrastructural facilities were made available by the administration. However, in the absence of adequate material brought on record by either party, particularly,

by the respondents, I find it difficult to go
of the case
into the ~~merits~~ whether the facilities provided
for messing at the training centre at Secundarabad
arrangement
qualify ~~as~~ messing on cooperative basis and therefore
only
the trainees being entitled for payment of half rate
daily allowance beyond the period of 30 days as per
the rules referred to earlier.

8. Without going to the issue whether the
ing arrangement
Mess provided at the training centre qualifies ~~as a~~
Mess being run on cooperative basis and leaving
this question open, I am of the view that in terms
of the letter dated 19.1.1998 brought on record at
R-4 by the respondents, the applicants are entitled for the
relief for
~~1~~ payment of daily allowance at full rate and no
recovery alleging excess payment needs to be made
from the applicants. On going through the letter
at R-4, it is noted that this has been issued in
clarification to the reference made by the Maharashtra
Telecom Circle with regard to the payment of daily
allowance. In this letter, reference has been made to
the instructions having been issued separately in
the consultation with the Ministry of Finance, Deptt.
of Expenditure with regard to the payment of daily
allowance. ~~of this~~ Copy orders referred to in R-4 has
been subsequently made available during the hearing.
~~1~~ This letter is also dated 19.1.1998. This letter
brings out that the issue with regard to the
admissibility of daily allowance to the Department
of Telecom employees during the training period at
the various training institutes has been examined
in consultation with the Ministry of Finance, Department
of expenditure and it has been decided that the employees

being sent to the training institute where the Mess run on cooperative basis is provided will be allowed daily allowance at the full rate for the first 30 days and half rate for next 150 days. The respondents have contended referring to the rules laid down as per the Govt. of India's order No.3 below S.R. 164 as well as subsequent instructions issued by Department of Telecom as per letter dated 10.10.1991, that the instructions were already existing but the same were not correctly followed by the respondents. However, on going through the contents of the order dated 19.1.1998, I am not inclined to subscribe to the stand of the respondents. The letter dated 19.1.1998 addressed to all the Chief General Managers and Heads of Telecom Training Centres clearly brings out that it has been decided to regulate the payment of daily allowance as per Govt. of India's Order No.3 below S.R. 164 in case the Mess to be run on cooperative basis is provided. This would clearly imply that irrespective of the instructions issued earlier, the decision has been now taken and therefore such a decision can have only prospective effect as there is no mention in the letter that past cases will also be governed by these orders. The applicants have gone for training for the various periods during 1995-96 i.e. earlier to the order dated 19.1.1998 and therefore in my opinion, the applicants are entitled for payment of daily allowance at the full rate. The orders dated 19.1.1998 can have prospective effect and cannot be applied to the claim of the applicants in the present O.A.



9. The applicants have made a plea that along with them the trainees were deputed from the other units of the Maharashtra Circle as well as from other circles and they have been paid daily allowance at full rate and no recovery has been made from them. The respondents had not controverted this position and therefore they had been asked to check up the factual position on this aspect. The respondents have filed additional statement confirming that no recovery has been made from the trainees of the other units of the Maharashtra circle who were sent with the applicants. The respondents have, however explained that no recovery was made from the other units of Maharashtra Circle in view of the fact that the matter had been referred to the Ministry of Telecommunication and the Clarification had been received only as per order dated 19.1.1998 during the pendency of this OA. The respondents have further contended that even if no recovery had been made from the staff of the other units erroneously, the same cannot give any right to the applicants in the present OA. for claiming daily allowance at full rate which is not admissible as per rules and in view of this, the plea of discrimination raised by the applicants is not tenable. Keeping in view the findings above, the applicants are entitled for the relief as prayed for in view of the letter dated 19.1.1998. However, the issue of discrimination raised by the applicants is not sustainable and I am inclined to endorse the submission of the respondents. The question of discrimination arises only if there is an enforceable right as per the rules. Even if the other trainees have been paid full daily allowance

and the recovery had been not made from them erroneously, the same cannot give right to the applicants to challenge recovery from them for the excess payment if not admissible as per rules only on the basis of discrimination. The applicants can challenge and claim any relief only as per the extant rules.

10. In the light of the above deliberations, I find merit in the claim of the applicants and the O.A. is allowed setting aside the impugned orders dated 27.2.1997 and 21.3.1997. The applicants shall be entitled to payment of daily allowance at full rate for both the phases of training and no recovery shall be made for that. The interim order dated 25.4.1997 accordingly gets covered by the above directions. The issue with regard to the provision of Mess facility on cooperative basis as envisaged in the rules is left open as indicated earlier. No order as to costs.


(D.S. Baweja)
Member (A)

NS