

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 392/98

Date of Decision: 17.12.98

Shri H.B. Mishra
Applicant.

Shri C.B. Kale.
Advocate for
Applicant.

Versus

Union of India and others.
Respondent(s)

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

CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice Chairman.

Hon'ble Shri.

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

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

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1

Original Application No. 392/98.

Thursday the 17th day of December 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

H.B. Mishra
Postal Assistant
Azadnagar Post Office,
Andheri, Mumbai.

... Applicant.

By Advocate Shri C.B. Kale.

V/s.

Union of India through
The Director General,
Department of Posts,
Parliament Street,
New Delhi.

The Chief Postmaster General
Maharashtra Circle,
Mumbai G.P.O., Mumbai.

The Sr. Supdt. of Post Offices
Mumbai City North Division,
Azadnagar, Mumbai.

... Respondents.

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

O R D E R (ORAL)

{ Per Shri Justice R.G.Vaidyanatha, Vice Chairman }

This is an application filed for certain reliefs under Section 19 of the Administrative Tribunals Act 1985. The respondents have filed reply opposing the application. I have heard the learned counsel for both sides. Since the point involved is a short point, the O.A. is disposed of at the admission stage itself.

2. The applicant was working as Postal Assistant at Jogeshwari Post Office at the relevant time. It appears that during the period 1978-79 some fraud was committed in the use of B.R.L. Stamp on the B.R. Licenses to the tune of Rs. 5696/-

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A complaint was lodged against the applicant. After the investigation the Police filed charge sheet against the applicant in criminal case No. 606/P/91 (Old No. 1381/80) for offence under Sections 262, 263, 467, 468 and 409 of the Indian Penal Code in Andheri Metropolitan Magistrate's Court. It is stated that the applicant attended the criminal Court on 107 times alongwith his advocate. After the Trial the learned Magistrate acquitted the applicant by judgement dated 7.11.1996. In view of the acquittal of the applicant, it is stated that he is entitled to claim the expenses incurred in defending himself in the criminal case. He is also entitled to claim TA and DA for attending the criminal Court on 107 hearing dates. The applicant is claiming the total amount of Rs. 61,475/-. The applicant has made representation on 2.7.1997 claiming that amount. The respondents have rejected the claim by letter dated 19.11.1997. The applicant has also sent one more representation and also legal notice. No reply has been received. Therefore the applicant has approached this Tribunal praying for a direction to the respondents to make these payments and for consequential reliefs.

3. The respondents have pleaded that the application is not maintainable as the applicant has not exhausted the departmental remedies available to him and the application is barred by limitation. It is denied that the applicant was falsely implicated but it is stated that the applicant was acquitted for want of sufficient evidence and the applicant has not given necessary particulars regarding the claim.

The applicant has also not given the supporting vouchers along with the claim. Therefore it is stated that the applicant is not entitled to the amount claimed by him.

4. After hearing the learned counsel for both sides and perusal of the material on record and the law bearing on the point, I feel that it is a fit case in which the respondents should be directed to apply their mind and to come to a positive conclusion, whether the applicant is entitled to the claim or not on the basis of the existing rules.

5. The learned counsel for the applicant has invited my attention to the Office Memorandum of the Government of India dated 1.4.1987 in which it is provided that Government servant who is prosecuted and later acquitted may be granted TA for attending the Criminal Court treating as journey on Tour " provided the legal expenses incurred by him in defending such proceedings are reimbursed to him in full or in part, under the aforesaid Article of the Constitution." Therefore the applicant claims for TA can be considered by the respondents ^{provided the} ~~provided the~~ legal expenses incurred by him ^{is paid} either in full or part.

6. As far as the claim for reimbursement is concerned, it is covered by the O.M. of the Government of India dated 8.1.1959. This is found in Appendix I of Swamy's Compilation of Conduct Rules 1993 Edition, at page 124. para 2(a) of the O.M. reads as follows:

"Proceedings initiated by Government in respect of matters connected with the official duties or position of the Government servant. - Government will not give any *py*

assistance to a Government servant for his defence in any proceedings, civil or criminal instituted against him, by the State in respect of matters arising out of or connected with his official duties or his official position. Should, however, the proceedings conclude in favour of the Government Servant, Government may, if they are satisfied from the facts and circumstances of the case that the Government servant was subjected to the strain of the proceedings without proper justification, reimburse the whole or any reasonable proportion of the expenses incurred by the Government servant for his defence".

From a perusal of the later portion of the para we find that Government can sanction the amount if it is satisfied that the Government servant was subjected to the strain of the proceedings without proper justification and then reimburse either in full or part.

It is, therefore, for the Competent Authority to decide whether the applicant is entitled to reimbursement of the legal expenses as per the above O.M. Then it is also mentioned in that O.M. that consultation with U.P.S.C. may be necessary under Article 320(2)(d) of the Constitution. Under this constitutional provision the Government can grant reimbursement of legal expenses to a Government servant for any expenses incurred by him in defending the legal proceedings. In my view cryptic one letter reply sent by the respondents rejecting the claim of the applicant is not in conformity with the above office Memorandum. The Government has to apply its mind and if necessary consult the UPSC and then decide

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whether the applicant is entitled to reimburse^{ment} either in full or part, as per the O.M. mentioned above.

If the Government rejects the claim of the applicant for reimbursement of expenses then nothing need to be done. If the Government agrees and grants reimbursement of expenses either partly or in full, then ofcourse the Government will be obliged to sanction the TA etc. as per rules.

In the O.M. mentioned above the proper authority for taking the said decision is concerned Ministry of the Government of India who has to take a decision in consultation with the Ministry of finance and law.

7. The learned counsel for the respondents pointed out that the two representations given by the applicants did not contain details and particulars. The learned counsel for the applicant submits that if the respondents ask him to furnish the particulars he will furnish the same, but since I have concluded that the applicants case has not been considered by the respondents as per rules, A direction will have to be given to the respondents to act according to rules. Since particulars are not given in the two representations given by the applicant, I hereby give liberty to the applicant, in continuation of his previous representation dated 23.3.97 and 2.7.97, the applicant shall make a fresh representation giving details and particulars of the legal expenses incurred by him in defending himself in the criminal case. He may also give seperate representation regarding the claim of TA giving all the necessary particulars of dates etc. The Government to consider

the first representation regarding reimbursement of legal expenses incurred by the applicant as provided in the O.M. dated 8.1.1959. If necessary the Government may consult the UPSC under Article 320 of the Constitution of India as provided in the O.M. itself. It may also consult the Ministry of Law and Finance if necessary as provided in the O.M. After consultation, the Competent Authority shall apply his mind to the facts and circumstances of the case and then pass a speaking order whether the applicant is entitled to reimbursement of legal expenses incurred by him either partly or in full as mentioned in the O.M.. If the Competent Authority rejects the claim of the applicant then nothing further need be done. If the Competent Authority sanctions the reimbursement either partly or in full then the applicants claim for TA DA should be considered and sanctioned as per rules and as per the O.M. mentioned above.

The respondents are directed to consider the case on merits and as per the rules and pass appropriate order according to law. Needless to say that if any adverse order is passed the applicant can challenge the same as per law.

8. In the result the O.A. is disposed of at the admission stage by giving a liberty to the applicant to make a fresh representation in continuation of the old representation, by giving details and a direction to the respondents to consider the same as per the O.M. mentioned above and pass appropriate order according to law, in the light of the above observations.

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All contentions on merits on both sides are left open. The applicant is directed to make the representation within a period of two months from the date of receipt of copy of this order. The Competant Authority to pass appropriate order within six months from the date of receipt of the fresh representation.

In the circumstances of the case there will be no order as to costs.

R. G. Vaidyanatha

(R.G. Vaidyanatha)
Vice Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

CONTEMPT PETITION NO. 28/2000 IN
ORIGINAL APPLICATION NO: 392/98

TRIBUNAL'S ORDER

DATED:27.11.2000

None for the applicant. Shri S.S. Karkera for Shri P.M.

Pradhan.

2. The applicant has filed this application to proceed against the respondents for non compliance of the directions given in the OA. The directions given in the OA reads as follows:

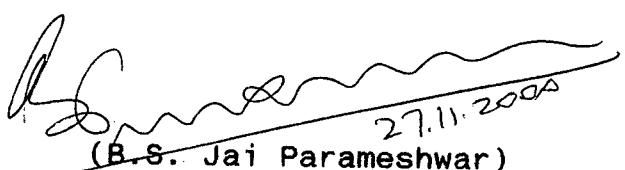
In the result the OA is disposed of at the admission stage by giving a liberty to the applicant to make a fresh representation in continuation of the old representations by giving details and a direction to the respondents to consider the same as per the O.M. mentioned above and pass appropriate order according to law, in the light of the above observations. All contentions on merits on both sides are left open. The applicant is directed to make the representation within a period of two months from the date of receipt of copy of this order. The Competent Authority to pass appropriate order within six months from the date of receipt of the fresh representation.

3. Accordingly the applicant submitted a representation dated 17.3.1999.

4. The respondents considered the representation dated 17.3.1999 for reimbursement of the expenses incurred by him for his defence in respect of Court case No. 606/P/91. The respondents in their reply dated 23.12.1999 (Annexure A - 3 page 12) have rejected the claim of the applicant to reimbursement of the expenses incurred by him in Court case.

5. In case the applicant is aggrieved by the rejection of reimbursement of expenses by the letter dated 23.12.1999, he is at liberty to file fresh OA under Section 19 of the Administrative Tribunals Acst 1985. Disposing of the representation in accordance with Rules cannot be considered as contempt. Hence C.P. is closed.

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(Ms. Shanta Shastry)
Member(A)


27.11.2004
(B.S. Jai Parameshwar)
Member(J)

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dd 27/11/04
for/...
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19/12/04

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