

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.402/04

On this the 7th day December, 2004

CORAM

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.Madan Mohan, Judicial Member

1. Amulya Johari
S/o P.S.Saxena
2. D.R.Suryawanshi
S/o Ramdin Suryawanshi
3. V.K.Sisodiya
S/o Vasudeo
4. Sameem Ahmed
S/o Haroon Rashid
5. Satish Meena
S/o Raghuram Meena
6. Om Prakash Laxmi Narayan
S/o Laxmi Narayan Shivhare
7. Rakesh Bhasin
S/o Shivlal Bhasin

Applicants.

All are drivers, Lobby, Betul
R/o RB-II, 199-C, Railway Colony
Amla, Betul.

(By advocate Shri V.Tripathi)

Versus

1. Union of India through
The General Manager
Central Railway
Mumbai CST
Mumbai.
2. The Divisional Railway Manager
Central Railway, Nagpur.
3. Chief Crew Controller
Central Railway
Amla, Betul.

Respondents.

(By advocate Shri M.N.Banerjee)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicants ~~have~~ claimed the following
reliefs:



- (i) To set aside the order dated 9th Oct.02 (Annexure A1); 19.4.04 (Annexure A2) and order dated 9.8.02.
- (ii) Upon holding that the recovery made from the applicants is bad in law, direct the respondents to repay the recovered amount with interest on delayed payment.

2. The brief facts of the case are that the applicants are working as Assistant Drivers under respondent No.5. The applicants get various allowances in lieu of their work. The allowances are calculated and paid as per the mileage per 100 kms per month. On various occasions, the applicants were also directed to work in the non-running work as Chief Power Controller/Crew Controller and were required to perform the duties of said posts. The applicants were given to understand that in lieu of work performed by them they will get 120 km mileage even in non running duties performed by them. Vide impugned orders dated 9.8.02 and 9.10.02, the Railway Administration imposed a recovery on the applicants from the month of Octover 2002. The respondents issued an order dated 12.9.02 directing to recover the mileage allowance paid from 1996 to 2001. No opportunity of hearing was given to the applicants. Without issuing any show cause notice, the recovery was ~~directed~~. However, the said recovery was stopped after October 2002. Against an order dated 9.10.02 (Annaxure A1), similarly situated employees of Bhopal Division filed an OA No.160/03 and the Tribunal stayed the order of recovery. Ultimately the OA was dismissed as being premature. In Nagpur Division, the respondent department started recovery w.e.f. April 2003. Feeling aggrieved, the applicants filed representations. However, no heed was paid by the respondents and recovery is still going on. Feeling aggrieved by the action of the respondents, this OA is filed.

3. Heard learned counsel for both parties. It is argued on behalf of the applicants that the applicants have filed Annexure A3 showing details of employmenent of the 7 applicants. The earlier OA No.160/03 filed by Sanjay Pandey & others was ~~dismissed~~ by order dated 25th August., 2003 on the ground that the matter was being considered by the respondents. The applicants have



not concealed any facts and they have also not furnished any wrong information to the respondents and the respondents have passed the impugned orders without issuing any show cause notice and without affording any opportunity of hearing. Legally the applicants are entitled for the reliefs claimed. Our attention is drawn towards 1994 (28) ATC 747 Sahibram Vs. State of Haryana & Ors decided on 19th Sept. 94 in which the Hon'ble Supreme Court has held that 'Pay - Excess payment - Recovery - Upgraded pay scale given due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee - In such circumstances recovery of the payment already made, restrained.' The applicants have never misrepresented before the respondents in any way. Hence they are entitled for the reliefs claimed.

4. In reply, the learned counsel for the respondents argued that the applicants have not given specific period and specific work extracted from them. Only such running staff who put in work as Power/Crew Controller are eligible for the payment of running allowance @ 120 km/day. On 31.1.2003, the Chief Personnel Officer had given directives to all the Divisions that shunters are now eligible for consideration for the post of Power/Crew Controller, and as such they cannot be utilised as Power/Crew Controller or for the payment of running allowance @ 120 km/day for stationary duties. The details of the hierarchy of drivers are mentioned in the return. The applicants are working in initial grade and they cannot be eligible to work in highest grade of the cadre. Hence they are not entitled for running allowance @ 120 km/day. They are entitled for 30% basic pay for stationary duties as per rule 8(b) of running allowance rules of 1981. Before recovery was made, opportunity of hearing was given to the applicants. Hence the action of the respondents is perfectly legal and justified.



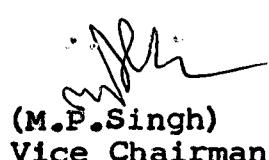
5.

5. After hearing the learned counsel for both parties and a careful perusal of the records, we find that according to Annexure A3, the names of applicant No.3 and 7 are shown to be designated as Goods Driver while the respondents have mentioned in their return that Goods Drivers are also eligible for the running allowance at the rate of 120 km/day. Therefore, these two persons apparently seem to be eligible according to the own version of the respondents but they are not considered. The applicants have filed a ruling 1994 (28) ATC 747 Sahibram Vs. State of Haryana decided on 19th Sept. 94. (Supra). The applicants have not made any misrepresentation and they have also not concealed any facts. The respondents have mentioned in para 19 of the return that the applicants have not exhausted departmental remedy and they have not filed any copy of the representation.

6. Considering all the facts and circumstances of the case, we are of the considered opinion that the applicants are entitled for the reliefs claimed. The applicants are directed to submit a fresh representation to the respondents, mentioning all facts and details, within one month from today and if they comply with this, then the respondents are directed to consider the same within 3 months from the date of such representation, according to rules and also in view of the ruling of Hon'ble Supreme Court cited above.



(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

aa.

मुख्यमंत्री सं. ओ/न्या..... जबलपुर, दि.....
प्रतिविधि दिनांक.....
(1) मुख्यमंत्री, उत्तर प्रदेश के नाम से विधायक, जबलपुर
(2) लोकसभा सं. ओ/न्या..... के कार्यसल V-Tripathi ADV-DBP
(3) प्रसादी सं. ओ/न्या..... के कार्यसल M.A. Benoyee ADV
(4) विधायक, के नाम से विधायक, जबलपुर
रुक्मिणी एवं आवश्यक दस्तावेज़ उपर्युक्त
उपर्युक्त

Received
On 14-12-09
BS