

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JABALPUR

O.A.No.893/2000

Hon'ble Shri G. Shanthappa, Judicial Member

Jabalpur, this the 3rd day of December, 2003

Brij Mohan Paliwal
s/o Late Shri M.L.Paliwal
aged 58 years
Chief Accounts Officer
r/o 19, Prakash Nagar
Indore.

... Applicant

(By Advocate: Shri V.Tripathi)

Versus

1. Union of India
through its Secretary
Ministry of Communication
Deptt. of Telecommunication
New Delhi.
2. The Chief General Manager
(Telecom)
M.P.Telecom Circle
Bhopal - 462 015.
3. The General Manager (Finance)
M.P. Telecom Circle
o/o Chief General Manager
Telecom, M.P.Telecom Circle
Bhopal.
4. The Chief Accounts Officer
(Finance)
o/o Chief General Manager (Telecom)
M.P.Telecom Circle
BHOPAL.

.. Respondents

(By Advocate: Shri .P, Shankaran)

O R D E R

By G. Shanthappa, Judicial Member:

The above Original Application is filed seeking the relief to set aside the order dated 31.8.2000 (Annexure A-1) and further direct the respondents to pay the daily allowances to the applicant for the period from 23.6.1997 to 19.12.1997 and from 20.7.1998 to 18.11.1998 with all consequential benefits along with interest at the rate of 18 per cent per annum for the delayed payments till the date of realisation by treating it to be a temporary transfer. The applicant has also amended

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the prayer seeking, in alternatively, the relief for treating the applicant's transfer order as regular transfer, the department be directed to provide all benefits as per rules to the applicant.

2. The case of the applicant, in brief, is that he was initially appointed on 2.12.1963 in the respondents' organisation as Clerk. While he was working, ~~he was promoted~~ as Senior Accounts Officer ~~on temporary basis~~, he was promoted on temporary basis as Chief Accounts Officer for a period not exceeding 180 days purely on temporary and officiating basis in the pay scale of Rs.3000-4500. When he was working as Senior Accounts Officer at Indore, he was transferred temporarily as Chief Accounts Officer in the Office of Telecom of District Manager, Ratlam vide order dated 9.6.1997 (Annexure A-2).

3. The respondents had published below S.R. 114 (Annexure A-4) wherein it was directed that in all cases of transfer for a short period not exceeding 180 days, the journey from head-quarter to the station of deputation and back may be treated as on tour for the purposes of regulating travelling expenses, daily allowances being paid for the days of halt as the station as under:-

"First 180 days full daily allowances (D.A.)"
That in view of the above Govt. of India's instruction, the applicant was entitled for the D.A. for the period 23.6.1997 to 19.12.1997.

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4. The applicant was again transferred on local officiating basis to the post of Chief Accounts officer (CAO) from the post of Senior Accounts officer (SAO) vide order dated 30.6.1998 (Annexure A-8) which clearly stipulates that the said transfer order is for a period not exceeding 180 days transferring the applicant from the office of TDM, Ratlam to TDM, Mandseur. The applicant has carried out this transfer order and remain on that temporary post from 20.7.1998 to 17.11.1998. On 28.10.1998, the department of Telecom regularly promoted the applicant as Chief Accounts officer which was communicated to the applicant by Respondent No.2 vide order dated 12.11.1998 (Annexure A-9). Under the said S.R. 114, the applicant is claiming that the said period shall be treated for the purpose of full daily allowances (DA). The applicant has submitted his representation dated 3.7.2000 and the respondents have issued the impugned order dated 31.8.2000 (Annexure A-1) informing that the officer was posted against a long term vacancy, the transfer was ordered as on regular basis. Accordingly, under SR 114, the applicant is not entitled for T.A.

5. Per contra, the respondents have filed reply contending that the applicant has no legal stand and has no legal right to claim the DA for his transfer. In fact, the transfer order was issued on regular basis. The applicant has suppressed the material fact, that though the applicant was aware of the order dated 10.3.1999, which relates to the local officiating promotion to Group 'B' employees.

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6. It is further stated by the respondents, in their reply, that the posting of the applicant and transferring of the applicant's cadre are controlled by the Circle Financial Wing, IFA who has issued the regular transfer of the applicant and uniform policy is being adopted by the IFA, in case of all such transfer order, however, the letter dated 17.12.1998 (Annexure A-7) the posting of an officer out-side his existing Headquarter of officiating promotion was allowed to draw allowance for first 180 days. The said order was subsequently revised vide order dated 10.3.1999 (Annexure R-1). The contents of the said order is as follows:

"When the officiating arrangement is against short term vacancies such as vacancy arising out of officers proceeding on leave etc., the transfer will be a temporary transfer and TA will be regulated as per G.O.I. decision No.2 below SR 114.

These orders shall have effect from the date of issue of this letter. Past cases decided otherwise need not be reopened."

7. The respondents have further clarified that the earlier order of transfer of the applicant was on regular basis, the promotion of the applicant was only for a period of not exceeding 180 days which was regulated and the applicant was given the promotion on ad hoc basis in pursuance to the DOT order dated 28.10.1998 and posted at the same place, i.e., D.T.M. Mandsaur. In view of S.R. 114 (Annexure A-4), the applicant is not entitled for full daily allowances. Hence, the applicant is not proved his case, the OA is liable to be dismissed.

8. Applicant has filed his rejoinder. Wherein he has reiterated the pleas taken in his OA.



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9. The respondents have filed an additional reply to the rejoinder contending that they have supported the action under the order dated 10.3.1999 (Annexure R-1).

10. After hearing the Advocate for the applicant and Advocate for the respondents and also perusal of the pleadings and the documents on record, I dispose of the said OA. The reliefs of the applicant are dual in nature. One relief is to set-aside the impugned order dated 31.8.2000 (Annexure A-1), if the said relief is not granted, the alternate relief is what the respondents have taken the objection, the respondents have themselves granted the alternate relief. The point of law involved in this OA is only whether SR 114 is applicable to the facts of the case. Admittedly, the applicant has been transferred vide order dated 5.9.1997 under the subject of officiating promotion of ~~JTOs to TES~~ ~~Group - 'B' purely on ad-hoc basis~~ in the JAG grade purely on ad-hoc basis vide Annexure-A/5. Vide Annexure A-3 dated 9.6.1997, the respondents have specifically mentioned at Para 4 as under:

"The transfer of Shri B.N.Paliwal to Ratlam is regular transfer."

Vide order dated 5.9.1997 (Annexure A-6) under the subject of Officiating Promotion of JTOs to TES Group - 'B' purely on ad-hoc basis wherein it has been mentioned as under:

"On completion of 180 days of local officiating, the officers will stand reverted. During this officiating period they are entitled for TA/DA as per departmental rules."

Vide Annexure A-7, dated 17.12.1998 under the subject of Local officiating promotion of JTOs to TES Group 'B',

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wherein it has been mentioned as under:

"If the officiating promotion is further extended after completion of first 180 days for any successive tenure, he will be treated as on regular transfer after completion of first 180 days. TA/DA shall be applicable to him as per existing rules on the subject."

11. The applicant has himself produced the provision below S.R. 114, which are Government of India's orders pertaining to Journeys on Transfer and especially he refers to S.R. 114(2) which relates to temporary transfer. The contents of the relevant paras are as under:

"(2) Temporary transfer:- (a) Entitlement: It has been decided that in all cases of transfers for short periods not exceeding one hundred and eighty days, the journeys from the headquarters to the station of deputation and back may be treated as on tour for purposes of regulating travelling allowances, daily allowance being paid for the days of halt at that station as under:-

First 180 days	----	Full daily allowance
Beyond 180 days	----	Nil

2. No advance of pay may be allowed in the case of temporary transfers.

3. No joining time is admissible in cases of ~~transfers~~ temporary transfer. Only the actual transit time, as admissible in the case of journeys on tour, may be allowed.

(b) other conditions: In a case where the transfer initially made for a period exceeding 180 days, is subsequently reduced to a period of 180 days or less, the transfer travelling allowance originally allowed should not be changed to the disadvantage of the Government servant.

2. If a temporary transfer initially made for a period not exceeding 180 days, is later extended beyond this period, the travelling allowance already drawn shall be adjusted in the transfer travelling allowance claim but the daily allowance admissible up to the date of issue of orders extending the transfer, will not be so adjusted.

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4. The orders contained above apply only in the matter of regulating travelling/daily allowance and bear no effect on other factors like assumption of charge of a new post, change of headquarters, change of audit circle, drawal of pay and allowances of the post, etc. associated with the term "transfer" defined in Supplementary Rule 2(18)."

12. When the order of transfer specifically speaks about the transfer was only on regular basis, the provision of SR 114 (supra) is applicable to the extent that the applicant is not entitled for full daily allowance if the applicant worked beyond 180 days. Admittedly, the applicant was worked beyond the 180 days, hence, he is not entitled for full daily allowance as per SR 114(2) (supra). As such, I do not find any merit as far as this relief is concerned.

13. However, according to the respondents' reply, the respondents have admitted the fact of the order of transfer was regular. Hence, the alternative relief is granted on the submission of the respondents. Therefore, the respondents are directed to grant all benefits pertaining to his regular transfer, as per the relevant rules and instructions on the subject, to the applicant within a period of three months from the date of receipt of a copy of this order.

14. In the result, for the foregoing reasons, the OA is partly allowed in terms of the above directions. No costs.


(G. SHANTHAPPA)
Judicial Member

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