

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

32

ORDERS OF THE BENCH

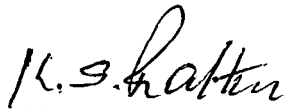
Date of Order: 10.07.2012

OA No. 571/2009

Mr. C.B. Sharma, counsel for applicants.
Mr. Tanveer Ahmed, counsel for respondent nos. 1 to 4.
None present for respondent no. 5.

Heard learned counsel for the parties.

O.A. is disposed of by a separate order on the
separate sheets for the reasons recorded therein.


(JUSTICE K.S. RATHORE)
JUDICIAL MEMBER

Kumawat

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NOS. 571/2009, 251/2010, 528/2010 &
529/2010 with MA 91/2011

DATE OF ORDER: 10.07.2012

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER

(1) ORIGINAL APPLICATION NO. 571/2009

1. Hajari Lal Meena S/o Shri Mangi Lal Meena, aged about 44, R/o Quarter No. T-95-R, Loco Colony, Jaipur and presently working as Head Clerk, Establishment Branch, Office of Divisional Railway Manager, North Western Railway, Jaipur-302006.
2. Ganesh Lal Vishwakarma S/o Shri Bulaki Ram, aged about 39 years, R/o Plot No. 381, Udyog Nagar, Jhotwara, Jaipur and presently working as Senior Clerk, Establishment Branch, Office of Divisional Railway Manager, North Western Railway, Jaipur - 302006.
3. Hari Kishan Meena S/o Shri Chaju Ram Meena, aged about 44 years, R/o quarter No. T-252-B, Loco Colony, Jaipur and presently working as Clerk, Establishment Branch, Office of Divisional Railway Manager, North Western Railway, Jaipur - 302006.
4. Rajendra Prasad Soni S/o Shri Bhairu Lal Soni, aged about 50 years, R/o Plot No. 42-Kha, Ram Nagar-Kha, Khirani Phatak Road, Jhotwara, Jaipur and presently working as Office Superintendent Grade-II, Establishment Branch, Office of Divisional Railway Manager, North Western Railway, Jaipur - 302006.
5. Bansidhar Bunkar S/o Shri Mahadev Ram Bunkar, aged about 48 years, R/o Z/2, Road No. 2, Ganpati Nagar, Railway Colony, Jaipur and presently working as Head Clerk, Establishment Branch, Office of Divisional Railway Manager, North Western Railway, Jaipur - 302006.

...Applicants

Mr. C.B. Sharma, counsel for applicants.

VERSUS

1. Railway Board through its Chairman, Ministry of Railways, Rail Bhawan, New Delhi.
2. Union of India through General Manager, North Western Zone, North Western Railway, Jaipur - 302006.
3. Divisional Railway Manager, North Western Railway, Jaipur Division, Jaipur - 302006.

(19)

4. Divisional Personnel Officer, North Western Railway, Jaipur Division, Jaipur-302006.
5. Union of India through Secretary to the Government of India, Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, New Delhi.

...Respondents

Mr. Tanveer Ahmed, counsel for respondent nos. 1 to 4.
None present for respondent no. 5.

(2) ORIGINAL APPLICATION NO. 251/2010

1. Bhagwan Sahay S/o Shri Bhanwar Lal, aged about 48 years, R/o District Mahendragarh, Haryana, Presently posted at SE (PWAY) Attelay as Gangman under N.W.R., Jaipur.
2. Gopal S/o Shri Nanak Ram, aged about 45 years, R/o Gram Chosla, Shivdaspora, Panchayat Kathawala, Tehsil Chaksu, District Jaipur, presently posted as Gateman at Gate No. 72 in between Sanganer Shivdaspora, N.W.R., Jaipur.
3. Ravindera Yadav S/o Shri Ramdev Yadav, aged about 50 years, R/o Durgapura, presently posted on Head Booking Clerk at Durgapura Railway Station under North Western Railway, Jaipur.

...Applicants

Dr. Saugath Roy, counsel for applicants.

VERSUS

1. Union of India through General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager, North Western Railway, Jaipur Division, Jaipur.
3. Divisional Personnel Officer, North Western Railway, Jaipur Division, Jaipur.

...Respondents

Mr. V.S. Gurjar, counsel for respondents.

(3) ORIGINAL APPLICATION NO. 528/2010

Ram Swaroop Gurjar S/o Shri Hanuman Sahai Gurjar, aged about 33 years, R/o Jagdamba Colony, Phulera and presently working as Loco Pilot (Goods), under SSE Loco Phulera, North Western Railway, Phulera.

...Applicant

Mr. C.B. Sharma, counsel for applicant.



VERSUS

1. Union of India through General Manager, North Western Zone, North Western Railway, Head Quartered, NWR, Jawahar Circle, Jagatpura, Jaipur.
2. Divisional Railway Manager, North Western Railway, Jaipur Division, Jaipur – 302006.
3. Divisional Mechanical Engineer (Power), North Western Railway, Jaipur Division, Jaipur – 302006.

...Respondents

Mr. Anupam Agarwal, counsel for respondents.

**(4) ORIGINAL APPLICATION NO. 529/2010 with
MISC. APPLICATION NO. 91/2011**

Ram Swaroop Bairwa S/o Shri Ram Prasad Bairwa, aged about 41 years, R/o Quarter No. 559-B, AEN Railway Colony, Phulera and presently working as Assistant Loco Pilot, under SSE Loco, Phulera, North Western Railway, Phulera.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through General Manager, North Western Zone, North Western Railway, Head Quartered, NWR, Jawahar Circle, Jagatpura, Jaipur.
2. Divisional Railway Manager, North Western Railway, Jaipur Division, Jaipur – 302006.
3. Divisional Mechanical Engineer (Power), North Western Railway, Jaipur Division, Jaipur – 302006.

...Respondents

Mr. Anupam Agarwal, counsel for respondents.

ORDER (ORAL)

Since common question of law and facts are involved in Original Application Nos. 571/2009, 251/2010, 528/2010 & 529/2010 with MA 91/2011 and also similar reliefs have been sought by the applicants, thus, with the consent of learned counsels for the respective parties, the same have been heard together and are being disposed of by this common order. The



facts of Original Application No. 528/2010 are being taken up as a leading case.

2. The brief facts of the case are that 6th Pay Commission recommended certain benefits to the employees on account of Children Education Allowance and reimbursement of tuition fee and Government of India after due consideration issued OM dated 02.09.2008 in supersession of all earlier orders on the subject which provide payment of children education allowance and reimbursement of tuition fee and further hostel subsidy in item 1(i) which reproduced as under: -

"1(i). Hostel subsidy will be reimbursed upto the maximum limit of Rs. 3000/- per month per child subject to a maximum of 2 children. However, both hostel subsidy and Children Education Allowance cannot be availed concurrently."

Pursuant to the OM dated 02.09.2008, order dated 01.10.2008 has been issued by amending existing instructions for allowing benefits, and the applicant applied for Hostel Subsidy for his wards studying with the hostel facilities at Jaipur and the respondents after due consideration allowed payment of hostel subsidy @ Rs. 3000/- per month w.e.f. 01.09.2008 and, accordingly, the applicant received payment.

3. The Government of India further issued OM dated 11.11.2008 for certain clarification and Railway Board further forwarded the same vide letter dated 19.12.2008 (Annexure A/4). Further clarification was issued by the Railway Board vide



its order dated 04.05.2009 (Annexure A/5). The Railway Board further clarified certain points for reimbursement of hostel subsidy vide order dated 06.11.2009 (Annexure A/6) in which it was made clear that hostel subsidy is reimbursable to all Central Government employees for keeping their children in the hostel of a residential school away from the station they are posted or residing irrespective of any transfer liability. In view of the clarification issued by the Railway Board vide order dated 06.11.2009 (Annexure A/6) subsidy, which has been paid to the applicant, has been recovered from the salary of the employee.

4. The submission of the learned counsel appearing for the applicant is that the applicant is legally entitled to get the payment of hostel subsidy. The applicant never misrepresented in payment of hostel subsidy and he submitted his claim as per OM dated 02.09.2008 and respondents after due consideration allowed payments from time to time. The wards of the applicant studying at Jaipur away from Phulera and the applicant fulfill all the conditions as per orders issued by the Railway Board from time to time but respondents without due consideration started recovery and recovered Rs. 10,000/- from the pay & allowances from the month of December, 2009, against which applicant represented vide request dated 27.01.2010.

5. Though certain amount had been recovered from the pay of the applicants in OA No. 251/2010 but vide interim order dated 17.05.2010, the respondents were restrained to effect recovery in respect of applicant nos. 1 and 2 for the amount of

hostel subsidy disbursed to these applicants in the year 2008 till the next date. So far as applicant no. 3 is concerned, the respondents were given liberty to make recovery of the amount in easy installment of Rs. 1000/- per month, whereas in other Original Applications, since the amount had already been recovered, no interim order was passed by this Bench of the Tribunal.

6. The applicant, in present OA No. 528/2010, had earlier filed OA No. 78/2010 and this Bench of the Tribunal vide order dated 04.02.2010 disposed of the same at admission stage with the direction to the applicant to submit representation before the respondent no. 2 and the respondent no. 2 shall decide the same within a period of one month with the further direction that no recovery should be made from the pay of the applicant till expiry of 15 days from the date of order to be passed by respondent no. 2.

7. Pursuant to the directions issued by this Bench of the Tribunal in OA No. 78/2010, the applicant submitted his representation on 22.02.2010 before the respondent no. 2 but the respondent no. 2 has not decided the representation filed by the applicant and without deciding the representation within the stipulated period, the respondent no. 3 served memo of minor penalty charge sheet to the applicant vide memo dated 04.06.2010 (Annex. A/13), and ultimately the applicant has been punished with the stoppage of due increment whenever due for three years without cumulative effect vide order dated



24.06.2010 (Annex. A/15), against which the applicant preferred an appeal on 07.08.2010 and the same is pending consideration. Ultimately, the respondent no. 2 vide letter dated 26.11.2010 (Annex. A/1) rejected the representation of the applicant.

8. Aggrieved and dissatisfied with the rejection of the representation, the applicant preferred the present Original Application on the ground that the applicant submitted his claim as per OM dated 02.09.2008 and after due consideration, the respondents allowed payment of hostel subsidy to him, thus, after disbursing the same, the respondents have no legal right to recover the amount of hostel subsidy as the applicant is legally entitled to get the same. It is further stated that the OM dated 02.09.2008 has been issued on behalf of the President of India and further clarifications have been issued with the concurrence of Ministry of Finance as well as Ministry of Railways, thus, subsequent clarifications cannot take away vested right of OM dated 02.09.2008 and in OM dated 02.09.2008 nowhere deprived the applicant from due claim. Therefore, by way of filing the present Original Application, the applicant prayed that the respondents be directed to allow hostel subsidy to the applicant in respect of his wards and hold good payment made on account of hostel subsidy by quashing letter dated 26.11.2010 (annex. A/1) with the order dated 14.12.2009 (annex. A/1) and not to recover any amount on account of hostel subsidy paid to the applicant and to further allow the same, and he further prayed that the respondents be directed to



refund of Rs. 10,000/- to the applicant along with interest which has been recovered from the applicant.

9. Per contra, in reply to the Original Application, the respondents submits that the claim of the applicant has rightly been rejected vide order dated 26.11.2010. The order dated 26.11.2010 is clear and it has been provided that the claim is not maintainable for the reason that on an inquiry through the Personnel Inspector, it was revealed that the receipts which have been filed by the applicant along with his claim are not issued by the School with regard to the Hostel fees as per the Railway Board's letter No. RBE/135/2008, the Hostel subsidy and children education allowance cannot be availed concurrently, which was done in the present case. In fact, with regard to the case of the applicant, the respective school has clarified that they do not have any hostel facilities for the girl students.

10. The respondents further submitted that the claim of the applicant along with others was further got verified and enquired upon by the Account Section as well and it was found that the school with regard to which the hostel subsidy is being claimed is not a completely residential school and the complete conditions with regard to the disbursement of hostel subsidy were not fulfilled and as such the claim of the applicant has rightly been rejected. It has further been stated that so far as the direction of the Hon'ble Tribunal in OA No. 78/2010 vide order dated 04.02.2010 is concerned, the same have been complied with, and in compliance of the order dated 04.02.2010, the



representation of the applicant was decided by a well reasoned and speaking order.

11. Learned counsel for the respondents further referred the Railway Board's circular and submitted that the children education allowance and reimbursement of tuition fees have been merged as children education allowance scheme and under the scheme reimbursement can be availed for the maximum of two children and the annual ceiling fixed is Rs. 12,000/- per child. The hostel subsidy can be reimbursed upto the maximum limit of Rs. 3000/- per month per child subject to a maximum of two children and it has been further clarified that both hostel subsidy and children education allowance cannot be availed concurrently.

12. Learned counsel for the respondents also submitted that the hostel subsidy is only applicable to the Central Government Employees for keeping their children in the Hostel of a residential school away from the station they are posted / or residing irrespective of any transfer liability. In the present case, the applicant submitted that his two daughters were studying in Navjeevan Senior Secondary School, Sodala, Jaipur and staying in the hostel in the school itself as he is posted at Phulera. In fact, in the report, which was conducted, it was found with regard to Navjeevan Senior Secondary School that they do not have any registered hostel and further the school has itself admitted that they do not have any hostel for girl



students, and upon detailed inquiry, it was decided that strict action should be taken against the Railway Personnel, who have made false claim and availed hostel subsidy when they were not entitled for the same and in this regard, disciplinary inquiry has been initiated against the applicant and he was served a charge sheet on 04.06.2010.

13. I have heard the rival submissions made on behalf of the respective parties and carefully perused the material available on record and the relevant provision of office memorandum, circulars, clarifications as well as judgments relied upon by the respective parties.

14. Learned counsel appearing for the applicants referred RBE No. 135/2008. As per RBE No. 135/2008, clause (i) 'Hostel subsidy will be reimbursed up to the maximum limit of Rs. 3,000 per month per child subject to a maximum of two children. However, both hostel subsidy and Children Education Allowance cannot be availed concurrently'. Learned counsels for the respective parties have also referred Office Memorandum dated 11th November, 2008 by which certain clarifications are made. As per clarification, 'Hostel Subsidy' means, expenses incurred by the Govt. servant if he has to keep his children in the hostel of a residential school away from the station at which he is posted / or is residing. It may include expenses towards boarding, lodging and expenses as detailed in para. (e) of the original OM No. 12011/3/2008-Estt. (Allowance) dated 02nd September, 2008.



15. In OA No. 251/2010, Dr. Saugath Roy, learned counsel appearing for the applicants, in addition to the submissions made by Shri C.B. Sharma, who is appearing on behalf of the applicants in other OAs, submits that the recovery is made effective without giving any prior notice to the applicants, thus, the action of the respondents is contrary to the ratio decided by the Hon'ble Supreme Court in the case of Bhagwan Shukla vs. Union of India & Ors., reported in (1994) 6 SSC 154, wherein the Hon'ble Supreme Court has held that 'pay fixed on promotion - Reduction of, on the ground of having been wrongly fixed initially - held, prior opportunity ought to have been afforded - order of reduction passed without affording opportunity, held, violative of principles of natural justice. Dr. Saugath Roy, learned counsel for the applicants also produced prospectus / brochure of National Public Senior Secondary School, 51, Janakpuri-II, Imliwala Phatak, Jaipur, in which wards of the applicants are studying and residing in hostel.

16. I have carefully gone through the prospectus / brochure of National Public Senior Secondary School, 51, Janakpuri-II, Imliwala Phatak, Jaipur, in the heading 'School Profile', it has been mentioned that 'since profile its inception in 1981, National Public Senior Secondary School has attained dignified position. The school which functions under a Registered body of National Public Senior Secondary School, Samiti has a mission to provide modern, scientific, liberal and comprehensive education for all round development of a child's personality. It is affiliated to the Rajasthan Board of Secondary Education, Ajmer. This Institution



runs one more Institution as National Public Senior Secondary Hostel, separately for boys and girls.

17. With regard to Navjeevan Senior Secondary School, Sodala, Jaipur, it is admitted that the hostel is away from the school as observed during the inquiry. I have also carefully gone through the office memorandum dated 30th December, 2010, in which the definition of 'station' for the purpose of hostel subsidy is clarified that 'for the purpose of hostel subsidy, station would be demarcated by the first three digits of the PIN Code of the area where the Government Servant is posted and/or residing. The first three digits of the PIN Code indicate a Revenue District'.

18. As discussed hereinabove, as the respondents received huge hostel subsidy claims issued by few schools, like Navjeevan Senior Secondary School, Sodala, Jaipur and National Public Senior Secondary School, Jaipur, inquiry was conducted. The respondents observed that in the huge quantity, the receipts for hostel subsidy were issued by the Navjeevan Senior Secondary School, Sodala, Jaipur and National Public Senior Secondary School, Jaipur, which creates a doubt and to clear the doubt 'whether the hostel subsidy claims are as per office memorandum, circulars and clarifications issued by the Railway Board from time to time or not', and during the enquiry it was found that there was no proper hostel facility in these schools and even these schools cannot be said to be a residential schools. Admittedly, in Navjeevan Senior Secondary School, Sodala, Jaipur, there is no hostel facility available for girl



students, and the same is the case of the National Public Senior Secondary School, Jaipur, which reveals from the prospectus / brochure itself that this Institution runs one more Institution as National Public Senior Secondary Hostel, which is separately to the National Public Senior Secondary School. It is submitted by the respondents that some false claims were made by the employees of the Railways, but the respondents do not dispute that the applicants are not entitled to get the hostel subsidy, and submits that they can only be granted the said subsidy in view of the office memorandum, circulars and clarifications issued by the Railway Board from time to time.

19. To verify this fact that 'what steps are being taken up by the respondents now, prior to disbursing the hostel subsidy', the respondents were asked to place the original record for perusal, and the same has been submitted by the respondents for perusal. I have perused the original record wherein it is found that after receipt of the application for reimbursement of hostel subsidy, firstly, the respondents conducted the inquiry 'whether the proper hostel facility in school is existed or not', 'whether the school is residential or not', and also 'whether the claims are as per norms of the Railway Board or not', and after verifying the fact, the hostel subsidy amount is now being paid to the employee(s).

20. Having considered the overall submissions made on behalf of the respective parties, it reveals that during the enquiry it has been observed that school in which applicants' wards are



studying are not having a proper hostel facility and even cannot be termed as a residential school. Since the respondents have already conducted the inquiry and found that the hostel subsidy claims of the applicants are not in accordance with the office memorandum, circulars and clarifications issued by the Railway Board from time to time, therefore, the respondents have rightly rejected the claims of the applicants and have rightly recovered the amount, which was disbursed to the applicants for hostel subsidy. Thus, I find no merit in these Original Applications and the same deserves to be dismissed.

21. In view of the observations made hereinabove, all the Original Applications bearing Nos. 571/2009, 251/2010, 528/2010 & 529/2010 with MA 91/2011 are hereby dismissed with no order as to costs. Thus, the interim relief granted by this Bench of the Tribunal in OA No. 251/2010 stands vacated forthwith.

(JUSTICE K.S. RATHORE)
JUDICIAL MEMBER

kumawat

copy given vide

No. 754 & 755

18/7/12

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