

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00874/2016

DATED THIS THE 05TH DAY OF JULY, 2017

HON'BLE SHRI JUSTICE HARUN-UL-RASHID...MEMBER (J)
HON'BLE SHRI P. K. PRADHAN, MEMBER (A)

Chempappa,
S/o Rangappa,
Aged about 59 years,
Working as Jamedar Peon,
Supervisor's Training Centre,
South Western Railway,
Bangalore – 560 023
Residing at Thoti Muniappa Compound,
Vijinapura,
Dooravaninagar Post,
Bangalore – 560 016.

... Applicant

(By Advocate Shri B.S. Venkatesh Kumar)

Vs.

1. Union of India represented by
General Manager,
South Western Railway,
Headquarters Office, Hubli – 580 020.

3. The Senior Divisional Personnel Officer,
Divisional Office, Bangalore Division,
South Western Railway,
Bangalore – 560 023

4. The Director,
Supervisors Training Centre,
Near Bangalore City Railway Station,
Bangalore – 560 023.

... Respondents

(By Shri J. Bhaskar Reddy, Railway Standing Counsel,
Shri M.V. Rao, Amicus Curie and
Shri P.A. Kulkarni, Amicus Curie)

ORDER (ORAL)HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A):

The applicant in the present OA sought direction on the respondents to consider his claim for grant of double the rate of Conveyance/Transport Allowance in terms of Annexure-A4 and A5 orders and pay him from the date he became orthopaedically handicapped due to amputation of left leg.

2. The applicant has been working as Lascar/Jamedar Peon in the office of 3rd Respondent. He was initially appointed in 1985 and has put in nearly 31 years service. While he was working, he met with an accident resulting in injury to his leg. In 2002 one of the fingers of his left leg was amputated. The applicant continued to have medical problems and got admitted to Railway Hospital in March, 2011. He underwent amputation in his left leg below the knee level and after treatment he was discharged on 16.05.2011 (Annexure-A1). The Government of Karnataka also issued a disability certificate to him (Annexure-A2). He also mentioned that subsequently the applicant had even lost his right foot which was amputated in 2016. The applicant refers to RBE No. 111/2008 regarding grant of Transport Allowance to railway employees (Annexure-A4). In terms of the said RBE, blind and orthopaedically handicapped employees are entitled for payment of double the normal rate of Transport Allowance with applicable rate of Dearness Allowance. He submits that even the 5th Pay Commission had provided for similar benefits in terms of RBE 179/1997 (Annexure-A5). When the applicant became orthopaedically handicapped, he became entitled to double the rate of Transport Allowance in terms of the RBE. However in spite of the representations, initially made in

2012 (Annexure-A6) and subsequently in 2015 there was no action on the part of respondents to grant him double the Transport Allowance. Therefore he has filed the present OA seeking direction on the respondents to Transport Allowance in his favour accordingly.

3. The respondents in their reply statement submit that the applicant was not appointed in the category of handicapped person when he initially joined the service. When he joined the railway service, he was healthy. Afterwards he became diabetic and on meeting with an accident and due to injury his finger was amputated. Afterwards his leg below knee has been amputated. They submit that on perusal of the medical records produced by the applicant it is evident that he was not orthopaedically handicapped in the beginning but subsequently his legs were amputated due to diabetic reasons. Hence he is not entitled to grant of double Transport Allowance. The legal provisions of the Persons With Disabilities Act is also not supporting clearly the claim of the applicant. Moreover the applicant has filed this OA in 2016 after the lapse of 5 years hence the OA is liable to be dismissed on the ground of limitation.

4. Heard the learned counsel for the parties. Both the learned counsel for the applicant and the respondents reiterated the submission made in the OA and in the reply statement. In the present case, at the instance of the Tribunal, Shri P.A. Kulkarni and Shri M.V. Rao, learned Senior Counsels, acted as Amicus Curie to assist the Court. Both of them apprised the existing provisions pertaining to grant of double TA to employees entitled for this purpose. There is no stipulation that only a person who joined service under disability quota is entitled to such allowances. Whenever a person becomes

disabled and comes in the entitled category, he should get the benefit. They also mentioned that there is no doubt that the applicant should have come to the Tribunal earlier but however there have been number of instances where the Hon'ble Courts have allowed such cases but restricted the benefit to 3 years prior to the date of filing the OA. Since the applicant is a poorly paid employee and has lost both his legs this aspect should also be taken into consideration while deciding the matter.

5. We have carefully considered the facts of the case and submissions made by all the learned counsels. RBE No. 179/1997 relating to grant of Transport Allowance to railway servants stipulated under para vi as follows:

"vi. In terms of Board's orders vide No. F(E)I-78/AL-7/5 dated 23.10.1978 as amended from time to time, conveyance allowance is admissible to such of the Railway employees borne on regular establishment (including work-charged staff) as are blind or are orthopaedically handicapped with disability of lower extremities. Consequent upon coming into force of these orders, such conveyance allowance shall be abolished and instead all such employees may now be paid transport allowance at double the normal rates prescribed under these orders. In case, however, such handicapped employees have been provided with Government accommodation within a distance of one kilometer from the place of work or within a campus housing the places of work and residence, the allowance shall be admissible at normal rates as applicable under these orders. The allowance shall not be admissible in case such employees have been provided with the facility of Government Transport."

RBE No. 111/2008 issued on 12.09.2008 following recommendation of 6th Pay Commission stipulated under para 2 (i) as follows:

"2. The grant of transport allowance shall be subject to the following conditions:

(i) The blind or orthopaedically handicapped employees in terms of this Ministry's letter No. PC-V/97/I/7/12 dated 16.12.97 shall continue to draw this allowance at double the normal rates,

which shall, in no case, be less than Rs.1000/- per month plus the applicable rate of dearness allowance. The other conditions of Board's letter No. F(E)I-78/AL-7/5 dated 23.10.78 related to grant of conveyance allowance to blind and orthopaedically handicapped Railway employees shall remain unchanged."

Both provisions clearly indicate that orthopaedically handicapped persons are entitled to draw Transport Allowance at double the normal rate plus the applicable rate of Dearness Allowance. The argument of the respondent Railways that a person if healthy at the time of joining but subsequently became disabled is not entitled to such benefits does not stand to logic and cannot be accepted. The benefit of double rate of Transport Allowance are entitled to orthopaedically handicapped persons. There is no dispute that the applicant having lost his leg is clearly orthopaedically handicapped person and hence is entitled to the said benefits. We also note that the applicant initially made a representation in 2012 (Annexure-A6) but did not follow up thereafter or approached this Tribunal. He started making further representations only from January, 2015 onwards and filed the present OA on 27.09.2016. However considering the entire facts of the case, we condone the delay in approaching this Tribunal but would restrict the benefits to 3 years prior to the date of filing the application.

6. On detailed consideration of the facts of the case, we hold that the applicant is entitled to double the rate of Transport Allowance in terms of RBE No. 179/1997 and RBE No. 111/2008. However this benefit will be sanctioned in his favour from a date 3 years prior to the date of filing the OA, i.e., from September, 2013 onwards. The respondents are directed to issue necessary orders and release the consequential benefits to the applicant within a period

of 3 months from the date of receipt of a copy of the order. The applicant shall also produce a copy of the order within 15 days to the concerned authority.

7. The OA is accordingly allowed in terms of the aforesaid directions. No order as to costs.

(P.K. PRADHAN)
MEMBER (A)

(JUSTICE HARUN-UL-RASHID)
MEMBER (J)

ksk