

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 416/2012

Reserved on: 23.01.2019
Pronounced on: 06.02.2019

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)**

Pratap Singh son of Shri Chandra Pal Budania, aged about 51 years, resident of Village Adawata, District Jhunjhunu (Rajasthan). At present working Project Director R.S.R.B.D.L. Unit Sikar.

...Applicant.

(By Advocate: Shri Prahlad Singh and Shri C.B. Sharma)

Versus

1. The Union of India through the Secretary to the Government of India, Ministry of Road Transport and Highways, New Delhi.
2. The National Highways Authority of India, G-5 & 6, Sector-10, Dwarka, New Delhi-110075, through its Chairman.
3. The Chief General Manager (Finance), National Highways Authority of India, G-5 & 6, Sector-10, Dwarka, New Delhi-110075.
4. The Chief General Manager (HR/Admn.), National Highways Authority of India, G-5 & 6, Sector-10, Dwarka, New Delhi-110075.
5. Project Director, National Highways Authority of India, P.I.U. (Project Implementation Unit), 3-Priti Bhagwat Niwas, Behind Hotel Chandra Mahal, Sawai Madhopur Road, Malviya Nagar, Tonk (Rajasthan).

...Respondents.

(By Advocate: Shri Sandeep Saxena)

ORDER

Per: A. Mukhopadhyaya, Member (A):

This Original Application, (OA), arises out of the claims for T.A., D.A. and transfer T.A. Bill preferred by the applicant with the respondent organisation which, according to the applicant, still remain to be reimbursed in full.

2. Briefly, the facts of the case are that the applicant joined the respondent organisation as Deputy General Manager, [DGM (Tech.)], on deputation on 26.07.2010 at Delhi and remained in Delhi between that date and 16.09.2010 while awaiting posting orders. The applicant states that he submitted his T.A., D.A. and transfer T.A. Bill to Respondent No.5 on 15.02.2011, (Annexure A/19 refers), but no payment was made to him. When a detailed representation dated 22.02.2012, (Annexure A/22), followed by several other representations submitted to the respondents still bore no fruit, the applicant filed an Original Application No.100/2012 before this Tribunal stating his grievance. Vide order dated 28.02.2012, (Annexure A/23), this Tribunal disposed of the OA directing the respondents to consider the representations of the applicant on this count, pass a reasoned and speaking order and communicate the decision taken on those representations to the applicant within a period of two months from the date of receipt of a copy of its order. The applicant was also granted liberty to challenge any prejudicial order passed against his interest by way of filing a substantive

(3)

Original Application. Since the respondents thereafter passed an order dated 03.05.2012, (Annexure A/1), granting him T.A./D.A. for 17 days as against his claim for 42 days out of his 53 days stay in Delhi, holding that he was unauthorisedly absent from his duties for the remaining 36 days, the applicant has approached this Tribunal seeking the following relief:-

Relief

- (i) The Original Application be allowed. The impugned Memo dated 03.05.2012 be quashed and set aside and the respondents be directed to declare that the applicant was not absent unauthorisedly for 36 days as mentioned in Memo dated 03.05.2012.
- (ii) The respondents be further directed to declare the decision to recover the pay and availed facilities on cost basis is illegal as mentioned in Memo dated 03.05.2012.

Any other order or direction, which is deemed fit, just and proper in the facts and circumstances of the case, be passed in favour of the applicant.

Cost of this Original Application be awarded in favour of the applicant.

Interim Relief

During the pendency of the Original Application, operation of the impugned Memo dated 03.05.2012 be stayed and the respondents be restrained from making any recovery from the applicant and they further be restrained from taking any other action prejudicial to the interest of the applicant.

3. This Tribunal, vide its order dated 05.07.2012, restrained the respondents from making any recovery related to the impugned memo dated 03.05.2012.

(4)

4. The applicant states that the basic dispute in this case pertains to whether he did reside in a Delhi hotel, i.e. Hotel Karat, between the period between 26.07.2010 and 16.09.2010, i.e. the day after his posting orders to Tonk which were issued on 15.09.2010. The applicant states that his claim, although this stay was for 53 days, has been preferred only for a period of six weeks, (Annexure A/19), as per office order of 24.04.2000, (Annexure A/13), read with the corrigendum to the same issued on 25.04.2000, (Annexure A/14). His contention is that although he correctly submitted the bills for his stay at Hotel Karat in Delhi from 26.07.2010 to 16.09.2010, i.e. for 53 days, and further, limited his claim to reimbursement to 42 days, i.e. six weeks, as above, but still he has been paid TA and DA for 17 days only vide the impugned memo at Annexure A/1 by the respondents alleging that he was unauthorisedly absent for the remainder, i.e. 36 days. In support of his averments, the applicant has placed on record a copy of the relevant portion of the register of the Hotel, (Annexure A/5), showing his date of entry as being 24.07.2010. He further states that when he first presented his claim for TA, DA and his Transfer TA Bill vide application dated 15.02.2011, (Annexure A/19 refers), his claim for Rs.56,975/- specifically stated that **"claim for stay accommodation will be charged after issuance of NOC from guest house."** Thereafter, on 04.08.2011, (Annexure A/15), he submitted a bill for

(5)

Rs.1,18,000/- towards his stay at Hotel Karat along with the requisite NOC from the NHA Guest House in Delhi.

5. In reply, the respondents contend that there were certain discrepancies in the bills submitted by the applicant in that while the applicant claims to have stayed in Karat Hotel, Karol Bagh, New Delhi, the bills reportedly submitted by the applicant and made available to the respondents' Vigilance Division by its Finance Division were related to Karan Hotel, Paharganj, New Delhi. Drawing attention to the impugned memo at Annexure A/1, the respondents state that the discrepancy was investigated by their Vigilance Division and it was categorically established that the applicant had not stayed in Hotel Karan, Paharganj and had wrongly claimed reimbursement for the same. They further contend that during the 53 day period in question, the applicant had actually attended office for a period of 17 days only as evidenced by the access cards issued to him and consequently their allowing the applicant TA and DA for 17 days only, i.e. 53 minus 36 days of unauthorised absence, is correct and finally that the pay given to the applicant for the period of unauthorised absence is required to be recovered from the applicant along with **"availed facilities at cost basis"**. The impugned order also speaks of a report on the entire matter having been sent to the CVC for their first stage advice on taking departmental action. The respondents deny that the applicant was ever restrained by any of the authorities from attending office and that the period of

(6)

36 days absence from duties as referred to earlier is therefore entirely wilful.

6. Looking to the nature of the dispute involved in this case, the Tribunal, while disposing of related MA No.6/2015 vide its order dated 05.02.2015 directed the respondents to produce certain original documents, including the original copies of the vigilance investigation report referred to by the respondents in the impugned order as well as the original bills of Hotel Karan purportedly submitted by the applicant to the Administration/Finance Division of the respondent organisation and made available by them to the Vigilance Division as per the impugned memo at Annexure A/1. Finally, after a gap of over three years, an additional affidavit was filed on 30.05.2018 wherein the respondents have stated that these original documents are not traceable despite their best efforts and therefore the same cannot be provided.

7. Learned counsels for the parties were heard and the material available on record was perused.

8. The dispute in this case in substantive terms is whether the applicant did indeed reside, as he states, at Karat Hotel in Delhi during the period of 53 days in question and whether or not he attended his duties during that time. As regards the question of his residence at Hotel Karat, Karol Bagh, Delhi, while the respondents have contended that the applicant had originally

(7)

submitted his bills relating to a Hotel Karan, Paharganj, Delhi, they are unable to provide the original bills relating to Hotel Karan despite having specifically admitted that the applicant supplied these to them. Not only this, even after a period of three long years, they have been unable to supply even the original documents relating to the vigilance investigation vide which they claim to have established that the applicant falsely claimed that he stayed at Hotel Karan during the period in question. In view of this, we are constrained to observe that little or no reliability can be placed on the respondents' averments in this regard, more particularly because while on the one hand they have sworn to the truth of these events and documents **"on the basis of available record"** as per their verification of their reply to the OA on 25.09.2012, their subsequent affidavit of 2018 conveys that no such record is available with them.

9. The applicant, in his rejoinder to the respondents' reply, again categorically states that he never stayed in Hotel Karan and never submitted any bills at any point of time related to Hotel Karan and in the circumstances, there appears to be no substantive reason to disbelieve his claim especially as he reiterates that he did submit bills and documents related to his stay at Hotel Karat which he has brought on record.

10. As regards the issue of whether the applicant attended office during the period in question, the applicant says that he

(8)

presented himself for duty throughout the period on all working days. While the respondents claim that he attended office only for 17 days out of the 53 days in question, they have not specifically refuted the applicant's contention that during this period, he was not given any specific duties and was required to remain present only in the reception area of the respondents' office without being issued any permanent access card to enter the office. The applicant has further stated that while he tried to approach the higher authorities from time to time for his appointment/posting orders, he was instructed by them not to disturb the officers every day and was told that as and when his appointment/posting orders were issued, he would be informed of the same. Applicant's counsel has further contended that the position with regard to attendance and performance of duties etc. as applicable to the applicant was also equally applicable to many other officers who were awaiting posting orders at the time, (Annexure A/4 refers), and that these officers, unlike the applicant, have been paid their due claims for the entire period. The respondents have not been able to bring on record any substantive evidence to counter these claims either.

11. In the peculiar facts and circumstances of the case as detailed above, we find ourselves with little option other than to come to the finding that there appears to be nothing substantive on record to refute the applicant's claim that during the period in

(9)

question, i.e. between 26.07.2010 to 16.09.2010, he resided at Hotel Karat and presented himself for duties on all working days at the respondents' office in Delhi. Since the respondents are unable to provide the original copy of the vigilance report, which they claim, establishes the applicant's malafides, or indeed the documents/bills of Hotel Karan which reportedly triggered these vigilance proceedings, reliance cannot be placed on their averments and assertions in this regard. The respondents have also not been able to confirm as to what was the final outcome with regard to the advice sought from the CVC for initiating departmental action against the applicant or indeed whether they, or the applicant's parent department in the State Government, ever conducted any departmental inquiry against him on this matter. The applicant however states that he has never been indicted for any such alleged misdemeanour and that, as evidenced by the State Government's Certificate No.F.1(144)sani/87/E-773(rk-00185) dated 07.05.2018, (taken on record during the course of arguments), there were no departmental inquiries for judicial proceedings pending against him when he superannuated on 30.04.2018 from Government service. In the circumstances, there again appears to be nothing substantive on record to cast any significant doubt on the assertions made by the applicant in this regard.

(10)

12. Consequent upon the foregoing considerations, there appears to be no reason to disallow the applicant's claim for TA and DA and attendant benefits, as sought by him in this OA, for the disputed remaining period of 36 days referred to in this Original Application subject to the rules of the respondent organisation with regard to the rate at which the payments in question are to be effected and the limits enforceable on the same. Accordingly the OA is allowed and the respondents are directed to make such payments within a period of one month from the date of receipt of a certified copy of this order.

13. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

/kdr/