

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No. 3528/2015
MA No.3164/2015
MA No.1614/2019**

This the 28th day of May, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

1. Indian Railway Medical Services Association
through its Secretary General Dr. Atul Gupta,
253/1 B, Railway Officers Flats,
Panchkuian Road,
New Delhi-110001.
2. Dr. Anil Kumar Sharma, aged 54 years,
S/o late Shri R. K. Sharma,
R/o 156/1, Basant Lane, Railway Colony,
New Delhi-110055. ... Applicants

(By Mr. Sagar Saxena and Mr. Rajender Kumar, Advocates)

Versus

Ministry of Railways (Railway Board)
through its Secretary,
Rail Bhawan, Rafi Marg,
New Delhi. ... Respondent

(By Ms. Geetanjali Mohan, Advocate)

ORDER

Justice L. Narasimha Reddy, Chairman :

The 1st applicant is the Association of Indian Railway
Medical Services, and the 2nd applicant is one of its members.

2. The administration of the Railways was extending the facility of Transport Allowance (for short, TA) to the members of the applicant Association in different forms, from time to time. Through proceedings dated 12.09.2008, TA of different amounts was sanctioned, depending upon the Grade Pay of the employees. The Medical Officers drawing the Grade Pay of Rs.10,000/- and above were given option to avail the existing facility, or to draw the TA at the rate of Rs.7,000/- per month, plus Dearness Allowance (DA) thereon. This was slightly modified through order dated 12.09.2014. However, through an order dated 25.08.2015, the Railway Board stated that in view of the correspondence that ensued with the Ministry of Finance, the issue regarding admissibility of TA of Rs.7,000/- per month plus DA, to officers of the Indian Railway Medical Service (IRMS) is being re-considered, and, accordingly, the payment of the said allowance is kept in abeyance. The same is challenged in this OA.

3. The applicants contend that the facility was extended on the basis of the recommendations of the concerned Pay Commissions, and there is absolutely no basis for singling out the officers of the IRMS for denial of the same. They contend that the TA has virtually become a part of the service

conditions, and the same cannot be taken away through the impugned order in such a manner.

4. The respondents filed a counter affidavit, opposing the OA. It is stated that the correspondence in relation to the payment of the TA to the officers of the IRMS ensued between the Railway Board, on the one hand, and the Finance Ministry, on the other, and in view of the stand taken by the Ministry, particularly noting the difference between the NFU Scheme and the DACP Scheme, it was proposed to re-consider the entire issue, and accordingly, the impugned order was passed. It is also stated that the IRMS officers are drawing conveyance allowance at the rate of Rs.3300/- per month plus DA thereon, for maintenance of their own car, for the purpose of making visits and discharging other official duties. Reference is also made to the conditions incorporated in the Board's letter dated 29.08.2008, wherein it was mentioned that the officer must - (a) be drawing Grade Pay of Rs.10,000/- ; and (b) be eligible to use official car in terms of the Board's letter dated 06.11.1995, and since the second condition is not complied by the officers of the IRMS, the issue is being re-considered.

5. The applicants filed a rejoinder also.

6. We heard Shri Sagar Saxena and Shri Rajinder Kumar, learned counsel for the applicants, and Ms. Geetanjali Mohan, learned counsel for the respondents.

7. The Railway administration has its own arrangement, for providing the TA to the officers of different categories. The 6th Central Pay Commission addressed the issue, and made an attempt to link the allowance to the Grade Pay of the officers. Accordingly, the memorandum dated 12.09.2008 was issued. The preamble thereof reads as under:

“Consequent upon the decision taken by the Government on the recommendations of the Sixth Central Pay Commission regarding Transport Allowance vide Ministry of Finance’s Resolution No.1/1/2008-I-C dated 29.8.2008 and promulgation of the Railway Services (Revised Pay) Rules, 2008, the President is pleased to decide that in modification of this Ministry’s letter No.PC-V/97/I/7/12 dated 16.12.1997, the Railway employees shall be entitled to Transport Allowance at the following rates:-

xxx xxx xxx”

So far as the members of the IRMS who are drawing Grade Pay of Rs.10,000/- or more, are concerned, the provision was made as under:

“3. Officers drawing grade pay of Rs.10,000 & Rs.12,000 and those in the HAG+ Scale, who are entitled to the use of official car in terms of Board’s letter No.E(G)95AL4-9 dated 06.11.1995 shall be given the option to avail themselves of the existing facility or to draw the Transport Allowance at the

rate of Rs.7,000/- p.m. plus dearness allowance thereon. (*Emphasis added*)”

8. The Government of India, Ministry of Finance, Department of Expenditure, issued office memorandum dated 29.08.2008, dealing with the said issue. Para 3 thereof reads as under:

“3. Officers drawing grade pay of Rs.10,000 & Rs.12,000 and those in the HAG+ Scale, who are entitled to the use of official car in terms of O.M. No.20(5)-E-II(A)/93 dated 28.1.94 shall be given the option to avail themselves of the existing facility or to draw the Transport Allowance at the rate of Rs.7,000/- p.m. plus dearness allowance thereon. (*Emphasis added*)”

From a perusal of the above, it is evident that officers drawing Grade Pay of Rs.10,000/-, would be eligible to draw the TA @ Rs.7,000/-, if only they were entitled to use official car, in terms of the Board's letter dated 06.11.1995. The applicants are not able to assert that the Board's letter dated 06.11.1995 enables them to use the official car. However, they were extended the benefit of the TA of Rs.7,000/- plus DA thereon.

9. In the course of the correspondence that ensued between the Railway Board and the Ministry of Finance, some anomalies were noticed. Through office memorandum dated 23.12.2014, the Ministry clarified as under:

“2. The matter has been examined in this Department. It is clarified that as per Staff Car Rules

related instructions, officers of the level of Joint Secretary and above and Head of Department of the Central Government in the Senior Administrative Grade only are eligible for use of staff car. As Medical Officers under M/o Railways drawing Grade Pay of Rs.10,000/- either under Dynamic ACP Scheme (DACPS) or under the scheme of Non-Functional Upgradation (NFU) are not eligible for use of Staff Car, they are not eligible to draw Transport Allowance @ 7000/- p.m. plus D.A thereon in terms of para '3' of DoE's OM No.21(2)/2008-E.II(B) dated 29.08.2008, even though they may be drawing pay with Grade Pay of Rs.10,000/- p.m. in PB-4 under DACPS. Consequently, Officers of organized Group 'A' Services under M/o Railways, who are similarly placed, are also not eligible for drawl of Transport Allowance of Rs.7,000/- p.m., even though they may be drawing Grade Pay of Rs.10,000/- p.m. in PB-4 under NFU."

It is in the light of this development, that the respondents wanted to re-consider the issue. A final decision is yet to be taken.

10. Though the impugned order may result in stoppage of the payment of the TA of Rs.7,000/- per month, we find it difficult to interfere with the same, since a final decision is yet to be taken. The applicants do not have any vested right to be paid the TA. The record discloses that the officers are being paid conveyance allowance of Rs.3300/- plus DA thereon, in respect of their cars. Before the public exchequer is further burdened, a well informed decision needs to be taken, keeping in view the relevant provisions of law. We, therefore, decline to interfere with the impugned order. At the same time, we are of

the view that no recovery be effected from the applicants till a final decision is taken.

11. The OA is, therefore, disposed of, directing the respondents to take a final decision regarding extension or otherwise of the Transport Allowance at the rate of Rs.7,000/- per month plus DA, to the members of the applicant Association, within a period of three months from the receipt of this order. However, the amount already paid towards the said allowance shall not be recovered, and the respondents shall not be under an obligation to pay the said allowance until a final decision is taken. There shall be no orders as to costs.

12. Pending MAs also stand disposed of.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/