

Central Administrative Tribunal

Madras Bench

OA/310/01439/2016

Dated 3 day of June, Two Thousand Nineteen

P R E S E N T

Hon'ble Mr. T.Jacob, Member(A)

A.Balasamy,
Office Superintendent,
O/o the Chief Crew Controller,
Southern Railway,
Jolarpettai.
By Advocate M/s.R.Pandian

.. Applicant

Vs.

1. Union of India, rep by
The General Manager,
Southern Railway,
Park Town,
Chennai 600 003.
2. The Sr. Divisional Personnel Officer,
Chennai Division,
Southern Railway,
NGO Annexe, Park Town,
Chennai 600 003.

.. Respondents

By Advocate Mr.P.Srinivasan

ORDER

[Pronounced by Hon'ble Mr.T.Jacob, Member(A)]

The OA has been filed by the applicant under sec 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

".....to call for the records pertaining to the denial of salary and TA/DA to the applicant for the period from 15.12.2012 to 05.5.2013. To further direct the 2nd respondent;.

(a) To arrange payment of salary for the period from 15.12.12 to 05.5.2013, as the said period is treated as duty by the 2nd respondent;

(b) to arrange payment of Daily Allowance (TA/DA) for the period from 15.12.12 to 05.5.13, when he attended medical examination away from his headquarters for beyond 8 k.ms;

(c) to pass such other order/orders as this Tribunal may deem fit and proper and thus to render justice."

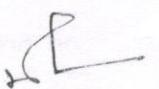
2. The case of the applicant is that, while he was working as Station Master Grade III was sent for Special Medical Examination wherein he was declared unfit by the Railway Medical Authorities for the post he was holding by their letter dated 02.05.2013. The said medical unfitness was challenged in OA 477/2014 which was dismissed by this Tribunal by order dated 20.6.14 and the WP 3620/2015 filed against the said order of this Tribunal was dismissed by the Hon'ble High Court of Madras on 16.6.2015. Subsequently he was absorbed in an alternative post of Office Superintendent. Though the period from 15.12.2012 to 02.05.2013 spent on medical examination was treated as Sick/CTL and Sick/LAP initially, later, on representations from the applicant the said period was treated as "On Duty" as per rules by the 2nd respondent.

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However, the 2nd respondent failed to arrange payment of salary and TA/DA for the above said period. Therefore, the applicant made representation dated 08.1.2016 to the 2nd respondent in this regard which is still pending for consideration. Aggrieved, the applicant has come up with this OA seeking the above mentioned relief.

3. The respondents in their reply contest the claim of the applicant stating that the Railway Medical Authorities vide their letter dated 23.11.2015 treated the period of Special Medical Examination of the applicant from 15.12.2012 to 2.5.2013 as on duty. Consequent on which the respondents regularized the period of PME/Sick from 15.12.2012 to 02.5.2013 as "On Duty" and advised the same to the respective depot supervisory official by letter dated 29.12.15. Based on which the respective bill drawing unit was also advised to treat the period of sick/PME as duty and claim difference of wages due if any, accordingly. Moreover, the respondents arranged payment of difference in salary for the period from 15.12.2012 to 2.5.2013 to the tune of Rs.1,03,352/- and the amount has been paid to the applicant through ECS on 23.10.2017 by Bill No.06021707719 dated 11.9.2017. In view of the payment, the relief claimed by the applicant has been granted and the consequential benefits were also extended. Hence, the OA has become infructuous and prayed for dismissal of the OA.

4. Heard both sides and perused the materials available on record, the additional reply filed by the respondents and the additional type set filed by the applicant.



5. Learned counsel for the applicant would submit that the period from 15.12.12 to 2.5.2013 when the applicant was subjected to special medical examination has now rightly been declared as on duty by the 2nd respondent, the applicant is entitled for payment of TA/DA. Though the applicant was provided with onduty pass /emergency duty pass for traveling to the Railway hospitals in Katpadi/Chennai, he was not paid "daily allowance", despite submitting the claim for TA/DA in the prescribed form namely "Travelling Allowance Journal". The applicant has submitted a representation dated 08.1.2016 for payment of TA arrears for the period from 15.12.12 to 05.3.13 .

6. On the other hand, learned counsel for the respondents submits that the applicant has not performed journeys on duty and only attended the Special Medical examination to assess his physical fitness for the duties. This cannot be equated to the journeys performed on duty. Moreover, the Controlling officer/Medical authorities have neither certified the movement of the applicant as journeys performed on duty nor the applicant has furnished any such details in Travelling Allowance Journal form. Therefore, the applicant has not been paid TA/DA while arranging the pay and allowances for the period from 15.12.2012 to 2.5.13 due to him on regularization of examination period spent on Special Medical Examination as duty.

7. The applicant joined in the Railway Service as an Assistant Station Master in Chennai Division of Southern Railway on 03.06.1999 and was later on promoted as Station Master Grade III in scale 5000-8000 (V CPC). While working as Station Master at Sevur Railway Station, he was subjected to special medical examination. Accordingly he attended the special medical



examination initially before the Divisional Medical Officer, Katpadi and later on before the Chief Medical Superintendent, Egmore, Chennai and he was declared medically unfit for the post of Station Master vide No.M/MD/141/1 dated 02.05.2013 issued by the Chief Medical Superintendent, Chennai Division, Southern Railway. Hence he was absorbed in an alternative post in the Office Clerk cadre as Office Superintendent w.e.f. 19.05.2015 and is presently posted in the office of the Chief Crew Controller, Jolarpettai.

8. According to the applicant when a Railway Staff moves outside from his head quarters for the purposes of discharging duties and stations situated at 8 or more Kms from his head quarters, he shall be eligible to draw daily allowance in terms of chapter 16 of the Indian Railways Establishment Code (hereinafter referred as the "Code"). According to the said mandatory provision available in that code, the Railway Staff are entitled to draw both traveling allowance and daily allowance. In that circumstances, the applicant had been directed to be moved to stations situated at more than 8 Kms from his head quarters i.e., Sevur to perform duties during the period between 15.12.2012 to 02.05.2013. Since during the period mentioned above, the applicant had been pressed in to go for duty beyond 8 Kms from his head quarters i.e., at Sevur, he shall be entitled to claim and draw the daily allowances. In spite of the statutory provisions, the said daily allowances for the period for which he claimed the same, had not been given to him. Therefore, the applicant in order to get the said benefit made representation dated 08.01.2016 to the the Sr.DPO/MAS which is said to be still pending before the respondents.



9. Learned counsel for the applicant would submit that the applicant would be entitled to draw compensatory allowance or TA/DA from the Railways for his involvement in duty for several days during the aforesaid period 15.12.2012 to 02.05.2013 where the applicant had been pressed into service beyond 8 Kms from his headquarters i.e., at Sevur. The learned counsel for the applicant, in support of his contention would rely upon the relevant provision on Indian Railways Establishment Code with regard to daily allowance. For better appreciation of facts and better understanding of the case, Rule 1614 is reproduced hereunder:-

1614. (1) Daily allowance may be drawn by a railway servant who is not in receipt of a permanent travelling allowance on any day on which he proceeds on tour beyond a radius of 8 Kms from his headquarter or returns to his headquarter from a similar distance.

(2) Daily allowance as in sub-rule (1) would be admissible even if the place of temporary duty falls in the same municipality as (or in a municipality contiguous to) that in which the railway servant's Headquarter is situated and the term 'radius of 8 kms.' should be interpreted as meaning a distance of 8 kms. by the shortest practicable route by which a traveller can reach his destination by the ordinary modes of travelling.

1615. Full daily allowance will be granted for each completed day of absence from the headquarters reckoned from mid-night-to mid-night i.e for each calendar day for the day of departure from his headquarter or return to his headquarter or when the journey commences and ends on the same calendar day, the railway servant shall be granted under mentioned proportion of the daily allowance:-

(i) If absence from headquarter does not exceed 6 consecutive hours30% of the daily allowance.

(ii) If absence from the headquarter does not exceed 12 consecutive hours 70% of the daily allowance.

(iii) If absence from the headquarter exceeds 12 consecutive hours full daily allowance.

10. By relying upon these provisions under the Railway's Establishment Code referred to above, the learned counsel would submit that the applicant admittedly had been in duty for several months beyond 8 Kms from his headquarters i.e. at Sevur and therefore, he would be entitled to get the daily allowance. The learned counsel would further submit that this aspect has not been considered by the respondents and thereby paid only difference in salary of Rs.1,03,352/- for the above said period without making payment of Daily Allowance.

11. There is no dispute with regard to the claim made by the applicant that he was working at the headquarters Sevur during the relevant point of time ie., 15.12.2012 to 02.05.2013 and he had been pressed into service beyond 8 Kms towards Railway Hospital, Perumbur, Chennai. Sevur is the headquarters of the applicant and the distance he travelled beyond 8 Kms, certainly come under the jurisdiction of the Chennai City. The only issue is, whether the applicant is entitled to get daily allowance for his duty beyond 8 Kms from headquarters.

12. In this regard, it is the contention of the applicant that as per the Indian Railways Establishment Code Volume II, in Clause No.1614, a Railway Employee can draw allowance, who is not in receipt of permanent travelling allowance, on any day, on which he proceeds on tour, beyond a radius of 8 Kms from his headquarters or return to his headquarters from a similar distance.

13. If Clause 1614 is applied to the case of the applicant, certainly he is entitled to draw travelling allowance or daily allowance for his travel beyond 8

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Kms from headquarters or travel beyond 8 Kms to reach headquarters as he was not in receipt of permanent travelling allowance. Here in this case, the applicant also claimed that he is entitled for the daily allowance for rendering duty of 8 Kms from the headquarters during the relevant point of time. When the individual has been held to have been on duty, this condition gets fulfilled beyond doubt.

14. The rules for treatment of the period of absence of Railway employees sent for Periodical Medical Reexamination (PME) are detailed in Rule No. 524 of Indian Railway Medical Manual and are as under:-

Time spent in journey to and from the actual medical examination may be treated as duty.

In case the examining authority refers the matter to Chief Medical Director (CMD), the period up to the announcement of the decision by CMD may be treated as duty.

In case the immediate supervisor or an officer is not available to allow an employee with a fit certificate to join his/her duty on return from periodical medical examination the time taken by such administrative delay may be treated as duty.

15. Therefore, the only controversy to be resolved herein is that during the relevant point of time i.e., from 15.12.2012 to 02.05.2013, the applicant is entitled to Daily Allowance. Here in the case on hand, the applicant seeks only Daily Allowanc for which he is entitled to as he had been pressed into service beyond 8 Kms from his headquarters at Sevur. The period spent by a railway servant attending medical examination is treated as duty. When the individual has been held to have been on duty, the condition gets fulfilled beyond doubt.

As such, read with the relevant rule position as per IREC, which has been

treated at par with the statute framed under the proviso to Art.309 of the Constitution of India, the applicant is fully entitled to the grant of Daily Allowance as per rules in force for the journeys performed by him during the relevant period at the rates applicable to his status.

16. In the conspectus of the above facts and circumstances of the case and the discussions hereinabove, the respondents are directed to consider the claim of the applicant for payment of Daily Allowance for the period from 15.12.2012 to 05.05.2013 when he attended medical examination away from his headquarters beyond 8 kms., and pass a reasoned speaking order on the representation of the applicant dated 08.01.2016 within a period of eight weeks from the date of receipt of copy of this order. The OA is disposed of accordingly. No order as to costs.