

181

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA No.2293/2003
MA No.1958/2003**

New Delhi this the 23rd day of August, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (J)

**Mr. R.S. Duggal,
Ex-Income Tax Officer
Under Commissioner of Income Tax,
Meerut and
R/o D-317, Shastri Nagar,
Meerut.**

-Applicant

(Applicant in person)

-Versus-

Union of India through:

1. The Secretary – Finance,
Department of Revenue,
North Block,
New Delhi.
2. The Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi.
3. The Commissioner of Income Tax
Aayakar Bhawan,
Meerut.
4. The Zonal Accounts Officer,
Zonal Accounts Office,
Aayakar Bhawan,
Meerut.

-Respondents

(By Advocate Shri V.P. Uppal)

ORDER

Applicant appearing in person has prayed for the following reliefs:

“8.1 That this Hon'ble Tribunal may be graciously pleased
to direct the respondents to pay an amount of Rs.24,800/-

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approximately against TA & DA which amount is admissible to the applicant as per the permission granted by the competent authority for traveling by car and also as per rules as contained in FR & SR.

8.2 That this Hon'ble Tribunal may be further pleased to direct the respondents to pay interest also on the TA & DA @ 12% per annum from the date when the aforesaid amount was due till the date of actual payment.

8.3 That any other or further as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case."

2. Applicant, who retired on superannuation as Group 'B' Income Tax Officer (ITO) on 31.10.1996 was served prior to his superannuation a memorandum for a major penalty.

3. As number of documents were listed in support of the chargesheet, were required to be inspected by applicant in the office of Presenting Officer at Ghaziabad.

4. The Commissioner of Income Tax (CIT), Meerut vide several orders issued from time to time under SR 31 permitted applicant to travel for inspection of documents by his own car. Accordingly, in pursuance thereof 11 visits had been made by applicant to Meerut for inspection of the documents.

5. The Inquiry Officer (IO) fixed the date for further proceedings in the inquiry of recording evidence at New Delhi and applicant attended the inquiry on nine occasions. He was issued certificates by the Presenting Officer for inspection and attending the disciplinary proceedings.

6. Applicant used to send his bills for payment of TA/DA to the CIT. The Zonal Accounts Officer has objected to the payment of the amount and raised objections, which were clarified by applicant and vide his final objection dated 17.12.98 agreed to pay an amount of Rs.15,264/- instead of the claimed amount of Rs.24,800/-. Ultimately a cheque for Rs.7,084/- was tendered to applicant which was represented but not responded to.

7. Applicant preferred OA-1866/2003 for quashing the disciplinary proceedings and for payment of amount of TA/DA which was disposed of on 30.7.2003 with a direction to respondents to dispose of the representation of applicant and with regard to claim of TA/DA, liberty was accorded to applicant to file a separate application. Hence the present OA.

8. Applicant appears in person and contends by placing reliance upon the decision of the Apex Court in **M/s Motilal Padampat Sugar Mills Co. Ltd v. State of U.P. & Others**, AIR 1979 SC 621 contends that the respondents are estopped by the doctrine of equitable estoppel, as once the AO and ZO have approved the bill of Rs.15,000/- in favour of applicant then calculating any other amount would not be sustainable.

9. Applicant further states that nothing in SR 31 precludes grant of road mileage to even a retired government servant which would be calculated at the rate of Rs.8/-. Once the Head of Department, who is CIT has allowed post fact, which is after undertaking the journey the same cannot be questioned.

10. Applicant further states that the bill of Rs.7,084/- was prepared without information to applicant and by resorting to SR 148 it is stated that the TA for retired government servant under instruction-4 for attending departmental proceeding is governed under SR 153-A and under SR-153-A a government servant under suspension is allowed TA as journey on tour.

11. Applicant further contends that the full rate of road mileage is to be allowed if public interest is involved, which has been considered by the competent authority, i.e., HOD as per SR 146-A. The provision does not show any thing about any restriction and was issued on 18.11.61, the restriction is on the analogy of SR 154 (6) (2) which is not in accordance with the provision.

12. It is contended that for perusal of the documents OM dated 5.3.87 restricts it to rail fare. The bill prepared does not have any reference to the journey from

12X

railway station and back and from railway station to the place of destination for inquiry. Distance is also not allowed.

13. By producing Indian Railway Time Table bringing in fares it is contended that the fare allowed is much more what has been calculated in the case of applicant.

14. On the other hand, respondents' counsel vehemently opposed the contentions and Sh. V.P. Uppal, learned counsel by resorting to SR-1, the Preamble contends that supplementary rules apply only to government servant unless otherwise expressly stated. By resorting to SR 31-A it is stated that the same has no application in case of a retired government servant and the requirement for grant of sanction in such a case is a reasoned order passed by the competent authority recording those special reasons. It is further stated that permission to undergo training is to be taken before hand whereas the sanction as granted by the CIT is post facto.

15. Learned counsel for respondents states that the only provision which deals with TA/DA to a retired government servant on his attending departmental inquiry as well as attending inquiry for inspection of the documents is concerned, is governed under SR 154, instruction (6) (a) and (b) and for perusal of documents three days DA along with to and fro rail fare as permitted as per the status of the retired government servant is permissible and for attending departmental inquiry allowances on the shortest route declared for the purposes of LTC, the place of inquiry and back is to accorded which would be to and fro journey of rail. In the aforesaid conspectus it is stated that once the amount has been rightly calculated and comes to Rs.7084/- which applicant was tendered but refused to have taken.

16. Learned counsel for respondents Sh. V.P Uppal contends that the matter was consulted through department of Expenditure and as per the advice the case

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was found covered under SR 154(6), Government of India's instructions sanction of journey by own car is not permissible.

17. On careful consideration of the rival contentions of the parties it is pertinent to reproduce instruction 6 figuring in SR 154:

“(6) T.A. to retired Government servant.—(a) For attending departmental enquiry against him.—A retired Central Government servant required to attend departmental enquiry instituted against him may be allowed travelling allowance as on tour by the shortest route for the journey in connection with the enquiry from his ‘home town’ (declared as such for the purposes of the Leave Travel Concession to Central Government servants) to the place of enquiry and back. Alternatively, in case the person concerned has taken up residence after retirement at a place other than his ‘home town’, he may be allowed traveling allowance for journeys from such place of residence to the place of enquiry and back. The place of residence means the place for which post-retirement traveling allowance claim was drawn or the place (Bank/Treasury) from which pension is being drawn. However, if at the time of receipt of summons, the retired Government servant is at a place different from his ‘home town’ or place of residence, the traveling allowance should be restricted to the shorter of the two journeys between that place to the place of enquiry and the ‘home town/place of residence to the place of enquiry.

The travelling allowance shall be regulated in accordance with the pay of the post held by the retired government servant immediately prior to retirement.

No advance of traveling allowance should, however, be paid in connection with such journeys.

[G.I., M.F., U.O. Note 3221-E, IV (B)61, dated the 20th November, 1961]

(b) For perusal of documents.—It has been decided that retired Government servants may be allowed Travelling Allowance as on tour, including daily allowance for halts (restricted to a maximum of three days only), for undertaking journeys to outstations for perusal of official documents in preparation of their defence against disciplinary proceedings instituted against them. The T.A. claims in such cases will be restricted to one to and fro rail fare, in respect of one such case, by the class to which the retired Government servant was entitled immediately prior to retirement, by the shortest route between the place of residence/declared place of residence up to which

retirement T.A. has been availed of/place from where the journey has actually been performed and the place where the documents are kept, whichever is less and daily allowance will be admissible as indicated above. The grant of Travelling Allowance will also be subject to the condition that the inquiring officer certifies that the official records to be consulted are relevant and essential for the preparation of the defence statement.

- (2) These orders take effect from the date of issue.
- (3) [G.I., M.F., O.M. No.19011/1/86-E.IV, dated the 5th March, 1987.]

18. As regards applicability of SR 31, it is made clear in SR-1 that these supplementary rules are applicable to only government servants and there is no reference to the retired government servant. Accordingly, for want of any other expressed provision SR 31 would have no application in case of a retired government servant full road mileage is to be allowed with the condition precedent of public interest. I do not find any public interest involved in attending departmental inquiry by a retired government servant or inspection of documents. Moreover the sanctions given by the competent authority were post fact which should have been permitted before hand and also for want of special reasons the same are no sanctions for road mileage. Applicant was not entitled for any road mileage.

19. As regards application of TA/DA to retired government servants for attending inquiries SR 154 specifically provides to a retired government servant TA/DA when attending inquiries and on journey undertaken to peruse documents. The same is to be treated as LTC and to and fro rail fare is admissible as per the category and class of the retired government servant. For perusal of documents maximum three days' DA and stay is allowed but the traveling allowance would be on the basis of one to and fro rail fare in the permitted class. As applicant is a gazetted 'B' officer rightly given 2nd AC rail fare, which to my considered opinion

has been rightly calculated as per the prevalent fare of to and fro journey and has been arrived at Rs.7084/-.

20. As regards AO and ZO preparation of bills to the tune of Rs.15,000/- and entitlement of applicant and the contention put-forth by applicant of promissory estoppel are concerned, it is trite law that estoppel cannot act against the statutory rules. If the amount arrived at by the AO and ZO is what has been impermissible in supplementary rule no benefit can flow from it.

21. Accordingly, calculations arrived at Rs.7084/- is the entitlement of applicant to which he should readily accept.

22. With this, finding OA bereft of merit the same is dismissed. No costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

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