(2024) 10 CAT CK 0006

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00426 Of 2017

K.S. Anil Kumar APPELLANT

Vs

Union Of India Represented By The General Manager, Southern Railway, Park Town, Chennai ? 600003 & Ors. RESPONDENT

Date of Decision : 10-10-2024

Acts Referred:

Citation : (2024) 10 CAT CK 0006

Hon'ble Judges : Sunil Thomas, Member, J;V.Rama Mathew, Member (A)

Bench : Division Bench

Advocate : Martin. G. Thottan, O.M. Shalina

Final Decision : Allowed

Judgement

V.Rama Mathew, Member A

1. The brief facts of the case are that the applicant was a Senior Clerk at the relevant time and now working as an Office Superintendent. He was issued with Annexure A-1 transfer order within the same station. Subsequently, he had applied for Composite Transfer Grant, a copy of which has been produced as Annexure A-2 and had put up an eligibility note because he was the incharge of pay and accounts of the seat concerned with making the payments, seeking approval of the payment of Composite Transfer Grant at the rate of 20% of the basic pay. The same was sanctioned, vetted and approved by the Senior DPO. Subsequently Annexure A-4 letter was issued by the 4th respondent on the ground that he was not legally entitled to Composite Transfer Grant for transfer within the same station. A detailed inquiry report was issued describing all charges. A disagreement note at Annexure A-5 was issued on the ground that as an officer processing the file, he should have been more in tune with the rules and should have not claimed a suggested approval of a non entitled claim. Based on this disagreement note a penalty of withholding of one increment for one month was issued. The same was appealed and the order of minor penalty was upheld by the Appellate Authority as well.

2. The rule position on entitlement for Composite Transfer Grant in the charge memo is Rule 1642(1) of the IREC. This addresses the issue of transfer between stations and transfer travel allowance and is, therefore, not germane to the issue under discussion. The Composite Transfer Grant is governed by Rule 1643 (D). What is the nature of a transfer and what amounts to a transfer between stations is governed by Rule 1645. As per the terms of Rule 1645 (ii) there would be a change of station if there is a transfer outside the range of 20 kms with the change of Municipality or Corporation with the change of residence. Therefore, the first charge in the charge memo is factually and legally correct. The second charge is that no documentary proof of shift of residence under Rule 1643 (D)(I) ((11) of IREC was produced at the time of application. However, this is in the nature of a pre-fixed form and the requirement for transfer between stations and not under Rule 1645. The third charge cannot be sustained if the first two charges are not maintainable. Therefore, the third charge is not maintainable. Also called into question is the competency of the 4th respondent in paragraph 5 of the rejoinder which alleges that this entire exercise was conducted in order to protect the Senior DPO as the sanctioning authority of the said amount and was also acting as a Disciplinary Authority. The argument presented is that there is an error of judgment which cannot be treated as misconduct.

3. The respondents clarified that the DPO is not the Senior DPO infact the Senior DPO is the supervisory officer for the DPO and the transfer order was issued by the Senior DPO. The appointing authority being the DPO, therefore, the allegation of lack of jurisdiction and misconduct would not be sustained. Annexure A-1 and Annexure A-3 formats were not dealt with by the DPO but the Senior DPO and this is with the approval of the competent authority. It was pointed out that the distance between the offices was of 1 km and the shift of residence which has been submitted in defence is from Prasanthnagar to Pirappancode with no change of station in work. Both falling within the station of Trivandrum, which is a pre-condition for seeking any grant. The Annexure A-3 recommendations is put up by the applicant himself and he has declared himself eligible even though the change of residence is not a result of the transfer, which is the rule position. It was argued that the penalty is not disproportionate as it was only withholding of one increment for one month.

4. The question which actually needs to be addressed is whether the respondent was misled by the applicant by non-production of documentation and, therefore, participated in an action of defrauding the exchequer.

5. The applicant has pointed out that Rule 1643(D)(I)(11) talks about the Composite Transfer Grant for transfer, it does not talk about the change of station and also that at the relevant point of time this disentitlement which is an admitted fact by both sides was not clear and this was subsequently clarified by Annexure R-1 document which in fact directs recovery of the amount wrongly paid in case of irregular payment of Composite Transfer Grant. Proviso (i) to Rule 1645 states that in the case of a transfer within the same station, the officer is

entitled to one third of the basic pay as Composite Transfer Grant provided there is a change of residence, as a result of transfer (Railway Board Letter No.F(E)I/2010/AL-28/36 dated 23.05.2013).

6. In fact, it appears from Annexure R-1 clarification that this was an error in appreciation of the rule position which happened sufficiently frequently which necessitated a clarification about the lack of entitlement of the Composite Transfer Grant and that being the position, it appears that issuing a minor penalty charge sheet and holding someone guilty for wrong appreciation of the rule position is not justifiable.

7. Hence, the O.A is allowed and the penalty order at Annexure A-7, appellate order at Annexure A-8 and revisional order at Annexure A-9 are set aside. Consequently, the respondents are directed to restore the reduced pay of the applicant. There shall be no order as to costs.

(Dated this the 10th day of October, 2024)

