(1995) 12 DEL CK 0036

In the Delhi High Court

Case No : Civil Writ Appeal No. 1037 of 1995

Narinder Singh Rao — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 15-12-1995

Acts Referred:
High Court Judges (Travelling Allowance) Rules, 1956 — Rule 7C

Citation : (1996) ILR Delhi 699

Hon'ble Judges : Dr. M.K. Sharma, J;Devinder Gupta, J

Bench : Division Bench

Advocate : N.S. Rao, Madan Lokur and Nandini Ramachandran, for the Appellant;

Judgement

M.K. Sharma, J.

(1) By this writ petition, the petitioner a retired Judge of Patna High Court and presently a member of the Kaveri Water Disputes Tribunal, seeks to challenge the decision of the respondent communicated through their letter dated 10/13-2-1995 intimating the petitioner that as per proviso to to Rule 7-C of the High Court Judges traveling Allowance Rules, 1956 (hereinafter called the Rules) no transfer/traveling allowance is admissible to the petitioner since the amount of transfer allowance claimed after retirement was less than the amount already claimed by the petitioner on leave travel concession under Rule 7-A. of the aforesaid Rules. The Petitioner further seeks for a direction to clear his bill amounting to Rs. 15,000.00 towards transportation charges, displacement (lumpsum transfer and packing allowances) and/or to get the same cleared.

(2) The, petitioner was a Judge of Patna High Court and he retired on 4-1-1994. Immediately thereafter the petitioner was appointed as a member of Kaveri Water Disputes Tribunal, which position he is holding till date. Consequent upon his retirement as a Judge of the Patna High Court, the petitioner sent his luggage of household articles on 26-1-1994 from his official residence at Patna to his native place at Gurgaon. Thereafter, the petitioner preferred a claim of Rs.

15,000 under Rule 7-G of the High Court Judges traveling Allowance Rules, 1956, referred to above. The break up of the aforesaid claim is as under :-

(i)Transportation charges : Rs. 9,500.00 (ii) Displacement (lumpsum transfer allowance) : Rs. 4,000.00 (iii) Packing allowances :Rs. 1,500.00 Total :Rs.15,000.00

(3) The petitioner did not claim any expenses for travel for himself or his wife or any of his dependent children in the; aforesaid bill. The aforesaid bill was presented to the Accountant General, Bihar for pre-audit through the Registry of the Patna High Court. On the receipt of the aforesaid bill the Accountant General, after certain correspondence with the Patna High Court, by letter dated 16-9-1994 finally expressed difficulty in settling the claim of the petitioner. The Registrar of Kaveri Water Disputes Tribunal sent a clarificatory note to the respondent on 31-10-1994/1-11-11994 staling inter alias that the bill submitted by the petitioner related only to the freight charges and the same did not include Ta and Da claim for himself or'' any member of his family and accordingly requested for a direction for payment of the aforesaid bill. By a letter dated 10/13-2-1995 the Under Secretary to the Government of India Ministry of Law, Justice and Company Affairs intimated the petitioner that as per proviso to Rule 7-C of the Rules no transfer traveling allowance is admissible to the petitioner since the amount of the transfer allowance claimed after retirement was less than the amount already claimed by the petitioner on leave travel concession under Rule 7-A of the aforesaid Rules. Being aggrieved by the aforesaid order passed by the Under Secretary to the Government of India, the petitioner has preferred the present writ petition before us.

(4) The respondent has contested the present writ petition by filing a counter affidavit staling inter alias that on'' reading clause (d) of Rule 7-C of the Rules it is apparent that transportation charges of personal affects are also covered under Travel concessions and since the petitioner had availed travel concession under Rule 7-A twice during one year prior to his retirement as Judge and had claimed Rs. 60,000.00 as Ltc reimbursement, the amount claimed under Rule 7-C would be reduced the amount claimed under Rule 7-A during the year prior to his retirement and as the amount claimed by the petitioner under Rule 7-C was less than the amount already claimed by him on Ltc under Rule 7-A no further amount is admissible to the Petitioner under Rule 7-C of the Rules.

(5) Since the defense put up by the respondents to the statements and averments made in the present writ petition mainly revolves around the provisions of Rules 7-A and 7-C of the High Court Judges traveling Allowances Rules, 1956, framed by the Central Government in exercise of powers conferred by Section 24 of the High Court Judges (Conditions of Services) Act, 1954 are quoted herein:-

"7-A.Notwithstanding anything contained in Rule 5, a Judge of the High Court shall be entitled to leave travel concession for himself, his wife and dependent members of his family for visiting any place in- India (including permanent residence in his home state) during his leave, twice a year, in accordance with he rules applicable in this regard to a member of the Indian Administrative Service holding the rank of Secretary to the Government of the State in which the principal seat of the High Court is situated. Explanation- For the purpose of this rule leave'' shall include vacation (any of the gazetted holidays, closed holidays and Sundays:) Provided that a Judge of the Delhi High Court and a Judge of the Punjab and Haryana High Court shall be entitled to leave travel concession under this rule twice a year, for visiting a place anywhere in india including home town) in accordance with he rules applicable in this behalf to a member of the Indian Administrative Service holding the rank of a Joint Secretary to he Government of India : Provided further that a Judge and his wife shall have the option to travel by air or by air-conditioned first class when traveling by railway, dependent members of the family shall also be allowed to travel with either of them by air or air-conditioned firs'' class, when the Judge or his wife travels on leave concession. Explanation-1 : For the purpose of this rule and for rules 7-B and 7-C. Permanent'' residence in the home state "means (i) in the case of a person who has held a judicial office in the territory of India, such place as may have been recorded in his service records as the place at which his permanent residence is located, and (ii) in any other case, the place which has been declared by a Judge of a High Court before the commencement of the High Court Judges'' (traveling Allowance) Amendment Rules, 1966 as the place at which his permanent residence is located, or where no such declaration has been made. such place as the Judge of a High Court may within one year from the commencement) of the High Court Judges (traveling Allowance) Amendment Rules. 1966. or from the date of his appointment whichever is later. declare to be the place at which his permanent residence is located and the declaration so made shall not be changed unless the Central Government having reward to the exceptional circumstances of the case permits Such change Provided that not more than one such change shall be permitted by the Central Government during the period of service of a Judge of a High Court, Provided also that a Judge shall be entitled to travel by road between place not connected by Rail/air transport while availing of leave travel concession facilities with the conditions that- (i) the place to be visited and the Headquarters is not connected either by Rail/Air transport ; (ii) the mileage allowance will be admissible by the shortest route from the nearest point to the airport/railhead and only one mileage; allowance would be admissible if all the Members of the family are traveling together, and (ill) one extra mileage allowance would be available to the family members of the Judges when traveling separately on separate dates but in no case the total number of mileage allowance shall exceed three. ''Year'' means the ''calendar year'', provided that in the event of the return journey falling the succeeding calendar year such journey shall be deemed to have been performed in the year in which he outward journey had commenced. 7-C. When a Judge retires from service. he and the members of his family shall be entitled to the following expenses for travel and" for the transportation of personal effects from the place in which he was on duty prior to his retirement to the permanent residence in his home State declared for the purposes ''of rule 7-A, 7-B or 7-C. If a Judge wishes to settle down at a place other than the permanent residence in his home State declared for the purposes of rules 7-A, 7-B and 7-C, the amount reimbursable to him on account of the expenditure actually, incurred by him on his journey end the journey of the members of his family and for the transportation of personal effects shall be that which would have been admissible to him had he actually proceeded to his permanent residence in his home State or the amount reimbursable for journey to a place other than the permanent residence in his home State, whichever is less. The precise entitlement as aforesaid under these rules shall be as follows namely: (a) When traveling by rail or steamer- (i) the Judge himself may travel by a reserved compartment or cabin of the highest class, (including air conditioned). The members of the family of the Judge may also travel in such reserved compartment or cabin with the Judge. (ii) members of his family not traveling in the reserved compartment or cabin may travel in the highest class of accommodation (including air conditioned) : Provided that the Judge or his family members may travel by a public air transport at his option. (b) when traveling by road- One mileage allowance for the Judge, a second mileage allowance if two members of the family traveling with him and a ''bird mileage allowance if more than two members of his family travel with him at the rate applicable to such Judge on the date he was last on duty. Provided that when any portion of the journey can be performed by rail, the allowance claimed in respect of that portion shall not exceed the amount admissible had the Judge and the members of his family ''ravelled on such portion by rail by the highest class, excluding air-conditioned. (bb) the Judge and every member of his family shall be entitled to a daily allowance .in respect of the journey by the modes referred to in clauses (a) & (b), at the same rates as are admissible to a Judge when he travels on duty and the provisions of clause (c) of sub-rule (1) of rule 2 shall, as far as may be, apply ; (e) for transportation of one motor car, by passenger train at Railways risk or steamer at owner''s risk; and (d) for transportation of other personal effects, not exceeding the expenditure which would be incurred in the transport of a full wagon and the expenditure incurred in loading and unloading such personal effects 705 (e) a lump sum transfer grant and packing allowance at the same rates as are admissible to All India Service Officers holding the post of Secretary to the Government of India. Provided that the above entitlement will lapse if the journey is not completed by the judge within six months from the date of his retirement. Members of his family may follow him within six months or precede him by not more than one month. The period of six month, or one month, as the case may be shall count from ''.he date of retirement of the Judge : Provided further that the amount of traveling allowance admissible to the Judge under the above rules shall be reduced by the amount claimed by the Judge as travel concession under rule 7-B if the E mount claimed by the Judge as travel concession related to the journeys performed by him and the members of his family during one year preceding the. date of retirement of the Judge".

(6) We have heard the petitioner who appeared before us in person'' and also Mr. Madan Lokur, who appeared on behalf of the respondents. Rule 7-A of ''he Rules relates to the entitlement quantum of leave travel concession by a Judge and his family members for visiting any place in India during his leave twice a year. It is to be noted that the aforesaid benefit is available to a Judge for visiting any place inside India, which may also include the permanent residence in his home State. On the other hand Rule 7-C relates to the benefit of entitlement to a Judge who oa his retirement from service is entitled to certain- expenses for travel and for the transportation of personal effects from the place of his duty, prior to his retirement to the permanent residents in his home State. The benefits to which such a Judge is entitled to on his retirement have been outlined within the provisions tot aforesaid Rule 7-C of the Rules. The precise entitlement of the aforesaid benefits relate to his traveling expenses, for transportation of other personal effects, a Jump sum transfer grant and also packing allowance. However, the second'' proviso has been added to the aforesaid provision of Rule 7-C of the Rules, which states inter alias that the amount of traveling allowances admissible to the Judge under the above rules would be reduced by the amount claimed by him as travel concession under Rule 7-B if the amount so claimed by the Judge as travel concession related to the journeys performed by him and the members of his family during one year preceding the date of retirement of the. Judge.

(7) The petitioner submitted before us that this Rule is ultra virus the Constitution of India and on the face of !t is arbitrary and illegal in view of the. fact that under the provisions of Rule 7-A a Judge is entitled to the benefit of leave travel concession for himself and to his family members for visiting any place in India including his permanent residence in his home State twice a year, whereas Rule 7-C relates to his entitlement to certain benefits of payment of his expenses for travel and for the transportation of his personal effects after retirement from service. Both the benefits and entitlements cover entirely two different fields and Therefore, there could have been no restriction on payment of such expenses incurred for transportation of his personal belongings ore retirement to a Judge, even if he had already availed of the benefit of two leave travel concessions for himself find his family members during the year for the journeys performed by him and the members of his family during the year preceding the date of retirement. The petitioner further submitted before us that the aforesaid Rule 7-B referred to in the said second proviso refers to the case of a Judge who dies while in service and Therefore, the said proviso cannot be made applicable and is apparently irrelevant for the purpose of the claim of the petitioner.

(8) Mr. Lokur, on'' the other hand submitted before us that traveling facility to the Judge of the High Court is governed by High Court Judges traveling Allowance Rules, 1956 and that in 1986 these Rules were amended extensively to provide better traveling facilities to the High Court Judges. According to him, prior to these amendments, brought in the year 1986 Rule 7-B of the

aforementioned Rules entitled a Judge for travel concession for himself and the members of his family to visit his permanent residence in his home State twice a year. After the amendment of Rules the entitlement of leave travel concession to the Judges was placed in Rule 7-A while Rule 7-B provides ''ravelling facilities to the family members of the Judges who die while in service and Rule 7-C provides traveling allowance to the Judges retiring from the service. Under the aforesaid circumstances he submitted before us that the words "Rule 7-B" appearing in the second proviso to Rule 7-C should in fact be read as Rule 7-A instead of Rule 7-B. We agree with the submission made by the learned counsel for the respondents that in fact on a harmonious reading of the enter Rules 7-A. 7-B and 7-C is crystal clear that Rule 7-B as referred to in the second'' proviso to Rule 7-C. should in fact be read as Rule 7-A and on such a harmonious reading the proviso does spell out proper and appropriate meaning.

(9) Regarding the challenge of the petitioner to the validity of the provisions of the second proviso to Rule 7-C, since in the contents of the writ petition and particularly in the prayers made therein. the petitioner has not challenged the validity of the aforesaid proviso to Rule 7-C of the Rules ''''n the waver portion of the writ petition except only taking a ground in that respect in the grounds of the writ petition. We are not inclined to consider the validity of the aforesaid provision of the second proviso to Rule 7-C of the Rules in the present petition except stating that the said provision requires reconsideration by the respondent.

(10) After issuance of Rule in this petition an objection was taken by the learned counsel appearing on behalf of the respondent that this court has no territorial jurisdiction in the matter in as much as the claim was settled by the Accountant General, Government of Bihar.

(11) On 5-9-1995, after hearing the learned counsel for the parties we recorded that we would confine the writ petition only to the interpretation of Rules 7-A, 7-B and 7-C of the aforesaid Rules. In view of the aforesaid order let us now turn to the interpretation of the aforesaid Rules and examine the validity of the interpretation given to the aforesaid Rules by the respondent in the impugned letter dated 10-2-1995

(12) Rule 7-A refers to entitlement of a Judge of the High Court to leave travel concession for himself and his family members twice a year for visiting any place in India. On an apparent reading of the aforesaid provision it is clear that such entitlement is not restricted to the permanent residence in the home State of the Judge but is applicable to any place any where in India. The said Rule further provides for various facilities available under the scheme of leave travel concession, but does not include the transportation of the personal effects of the Judge, nor any packing allowances. On the other hand when we read the provisions of Rule 7-C of the Rules we find" that a Judge on his retirement is entitled to expenses for travel and also for the transportation of personal effects from the place of his posting prior to his retirement to the permanent residence in his home State for himself and for he other members of his family. Such

benefits include actual expenses for travel whether by air, rail or by road and amongst others also for transportation of other personal effects, a lumpsum transfer grant and packing allowance at the same rate as is admissible to the Officers holding the same posts in the Government of India (Secretary to the Government of India. The words ''expenses by travel and for transportation of personal effects ; appearing in the substantive provision of Rule 7-C appear to have considerable significance for the purpose of the present case. The relevant proviso on the other hand states that the amount of traveling allowance admissible to the Judge under the above Rule would be reduced by the amount claimed by the Judge as leave travel concession under Rule 7-B (as observed above, it is to be read as Rule 7-A) if the amount claimed by the Judge as travel concession related to the journeys performed by him and the members of his family during one year preceding the date of retirement of the Judge. The word ''traveling allowance'' is not defined under the provisions of the relevant Rules. However, we find that the word ''traveling allowances'' is defined under Rule 2(32) of the Fundamental Rules, wherein it is defined thus :-

"TRAVELING allowance means an allowance granted to a Government servant to cover the expenses which he incurs in traveling in the interests of the public service. It includes allowances granted for the maintenance of conveyances, horses and tents."

(13) On a careful reading of the aforesaid provisions of Rule 7-A and 7-C including the second proviso and keeping the other relevant factors in mind it is apparent to us that the word ''traveling allowance'' as appearing in the aforesaid proviso could only mean the allowances to cover the expenses which he actually incurs for himself or his family members traveling and not the cost for the transportation of his personal effects and also the lumpsum transfer grant and packing allowance which are necessarily incurred for transportation and carrying his personal effects. The aforesaid view that we have taken is reinforced by the expression used in the provisions of Rule 7-C of the Rules wherein it says "expenses for travel and for the transportation of personal effects. The expenses for travel is the actual traveling expenses incurred and could not mean to include the transportation of personal belongings and packing charges thereof. Therefore, the said expression ''traveling allowance'' cannot include the charges for transportation of personal effects and also the lumpsum transfer grant and packing allowances.

(14) In the result, we hold that the second proviso to Rule 7-C of the Rules is applicable only to the expenses incurred by a Judge and his family members for their journey from the place of his'' posting to his permanent residence in his home State referred to in clauses (a) and (b) of Rule 7-C and the same is not applicable to the charges for transportation of personal effects, lumpsum transfer grant, packing allowance etc., referred to in clause (c), (d) and (e) of Rule 7-C. We, Therefore, quash the impugned order passed by the Under Secretary to the Government of India, Ministry of Law and Justice, the same having been found to

be contrary to the aforesaid interpretation given by us to the provisions of Rule 7-A of the Rules. This writ petition, Therefore, stands allowed to the extent indicated above. in the facts and circumstances of the case we however, make no order as to costs.

