

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3831 OF 2014

Sudhir Sambhaji Maldode,
Age 53 Years, Occ. Jr.Clerk [Operation],
R/o. Railway Quarter No. 426/5,
Railway Colony, Purna Jn.,
Tq. Purna, Dist. Parbhani

PETITIONER

VERSUS

- 1] South Central Railway,
having its office at 5th Floor,
Rail Nilayam, Secunderabad,
Hyderabad – 500 003
Through – The General Manager
- 2] The Chief Security Commissioner,
RPF/South Central Railway,
having its office at 5th Floor,
Rail Nilayam, Secunderabad,
Hyderabad – 500 003.
- 3] The Divisional Security Commissioner,
RPF, Nanded, South Central Railway,
Nanded Division.
- 4] The Assistant Sub-Inspector,
RPF, Parbhani,
South Central Railway,
Nanded Division.

RESPONDENTS

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Mr. S.T.Shelke, Advocate for the Petitioner
Mr. P.G.Godhamgaonkar, Advocate for the Respondent Nos.
1 to 4.

...

**CORAM: S.S.SHINDE &
P.R.BORA, JJ.**

Reserved on : 06.04.2015

Pronounced on: 15.04.2015

JUDGMENT: [Per S.S.Shinde, J.]:

1] Heard.

2] Rule. Rule made returnable forthwith heard with the consent of the parties.

3] By way of filing present Petition, the petitioner is seeking directions to the respondents to pay an amount of travelling allowance, conveyance allowance and holiday encashment to the petitioner of the period of 09.02.2010 to 03.02.2013.

**Brief facts disclosed in the memo of the
Petition are as under:**

4] It is the case of the petitioner that, the petitioner came to be appointed on 17.04.1984 as a Constable in Railway Protection Force. The petitioner came to be promoted to the post of Head Constable. petitioner met with an accident and has undergone operation of total

hip replacement. The Medical Authority of the respondents declared the petitioner unfit for armed force duty and recommended for alternative employment of sedentary type of job by Certificate dated 06.02.2010. It is the further case of the petitioner that, on 08.02.2010, the petitioner resumed his duty at RPF Outpost, Parbhani. On 09.02.2010, respondent No.4 Assistant Sub-Inspector, RPF, Parbhani, South Central Railway, Nanded Division, directed the petitioner to report at the office of the Divisional Security Commissioner, RPF, Nanded. The petitioner continued to perform his duty in the office of the respondent No.3 by daily commuting from Parbhani to Nanded.

5] It is the further case of the petitioner that, on 11.10.2010, the petitioner made a representation to the respondent No.3 Divisional Security Commissioner, RPF, Nanded for grant of travelling and conveyance allowance for the period of 10.02.2010 to July, 2010. However, on 02.02.2012, the claim of the petitioner came to be turned down on the ground that the petitioner is working on supernumerary post and therefore not entitled to TA, CA and holiday encashment.

6] It is the further case of the petitioner that, on 24.02.2012, the petitioner again made a representation enclosing Judgment dated 17.11.2014 of the High Court of Andhra Pradesh at Hyderabad, the High Court directed the respondents to monitor clearance of TA claims made by the petitioners therein. In the said case, the respondents came with a case that, instructions were already issued to the concerned for allowing the claim of the petitioners therein for travelling allowance. The petitioner also brought to the notice of the Authority that, in an identical situation, some railway teachers of Nanded, attached to the Divisional Railway Manager working on supernumerary posts, have been given six months' TA/CA and similarly some medically de-categorized out-stationed RPF Staff of Vijaywada Division of South Central Railway has also been given travelling and conveyance allowance by the respondents. The petitioner came to be relieved by I/c. Assistant Security Commissioner, RPF, Nanded Division in order to report before respondent No.4 on 05.02.2013 for relieving him so as to enable the petitioner to report before Sr.DPO/NED for further duties.

7] It is the further case of the petitioner that, in fact, the supernumery post is created by the same office for the time being for the medically unfit / de-categorized employee till his absorption in the alternative post. In case of the petitioner, no supernumerary post was created by the respondents. On the contrary, the petitioner was required to perform his duty in the office of the respondent No.3 at Nanded, when the Head Quarter was RPF Outpost, Parbhani and his salary was also drawn at Parbhani only, which is evident from Exhibit-J. The petitioner was required to commute daily from Parbhani to Nanded. The petitioner was, therefore, entitled to traveling allowance and conveyance allowance as the petitioner was required to perform his duty at Nanded, which is around 70 kilo meters away from his Head Quarter at Parbhani as per Chart-I. As per the Indian Railway Establishment Manual [IREM Vol.1, Chapter XIII, Rule No.1303], railway servants in Group (i) & (ii) of para 1302, ceased to perform duty of their post they are holding from the date they are declared medically unfit for the said post. In the present case, the respondent Nos. 3 and 4 have virtually violated the aforesaid Rule by asking the petitioner to perform duties at the office of respondent

No.3. Similarly, as per RPF Rules, 1987 and more particularly, Rule No. 93.6, any member of the force shall not be allowed to continue at a place more than four months on temporary transfer to any place without specific approval of respondent No.2. In the present case, the respondent No.2 did not follow this Rule.

8] As per IREM Rules, any employee if posted beyond 8 kilo meters from the Head Quarter, in that event such employee is eligible for claim travelling allowance. The petitioner has worked from 09.02.2010 to 03.02.2013 at Nanded by travelling everyday from Parbhani, a distance of 70 kilo meters. Since the claim has been denied, the petitioner is left with no option but to approach this High Court, as there is no alternative remedy to the petitioner, as the petitioner cannot approach Central Administrative Tribunal, as he was member of Railway Protection Force. Hence this Writ Petition.

9] The learned counsel appearing for the petitioner submits that, after medical examination, the Medical Authorities of the respondents declared the petitioner unfit for armed force duty and recommended for

alternative employment of sedentary type of job by certificate dated 06.02.2010. The petitioner resumed his duties at RPF Outpost, Parbhani on 08.02.2010. On the next day i.e. on 9th February, 2010, the respondent No.4 directed the petitioner to report to the Divisional Security Commissioner at Nanded for further duties. It is submitted that, the petitioner reported to the Divisional Security Commissioner at Nanded for further duties. The petitioner was attached with the office of the Divisional Security Commissioner, Nanded from 9th February, 2010 till 3rd February, 2013. Finally, petitioner came to be absorbed as Junior Clerk and came to be posted at Personnel Branch of Nanded Division. The petitioner came to be relieved by the Assistant Security Commissioner, RPF, Nanded Division, by letter dated 04.02.2013. It is submitted that, the petitioner's representations to the Divisional Security Commissioner, Nanded for grant of travelling allowance and conveyance allowance have not been properly addressed and erroneously rejected by the Authorities. It is submitted that, the Andhra Pradesh High Court at Hyderabad has ruled by its order dated 17.11.2004 in identical facts situation that, employees entitled for allowance and said are permissible. It is submitted that, the respondents have

violated the provisions in the Indian Railway Establishment Manual. As per the Indian Railway Establishment Manual [IREM] [Vol.I, Chapter XIII, Rule No.1303], railway servants in Group [i] and [ii] of para 1302, ceased to perform the duty of their post they are holding from the date they are declared medically unfit for the said post.

10] Therefore, relying on the pleadings in the Petition, grounds taken therein, and annexures thereof, the learned counsel appearing for the petitioner submits that, the petitioner is entitled for the relief prayed in this Petition.

11] The learned counsel appearing for the respondent Nos. 1 to 4 submits that, it is a fact that, the petitioner was appointed as Constable in Railway Protection Force Department on 17.04.1983 and promoted to the post of Head Constable. It is also a fact that, the petitioner met with an accident during the Year 2009, and medically declared unfit by the Medical Authorities and recommended for alternative employment of sedentary duties vide Certificate dated 06.02.2010. It is further submitted that, on medical de-categorization, petitioner reported to duty at RPF Outpost Parbhani on 08.02.2010. Since the petitioner

was declared unfit for duties by the Medical Authorities and there is no sedentary duty available at Parbhani Out Post, the respondent No.3, Divisional Security Commissioner, RPF, Nanded has directed the petitioner to report at his office at Nanded for further duties. The petitioner, accordingly, reported for duty on 09.02.2010 and continued till his absorption on alternative appointment on medical ground. The petitioner has been absorbed on an alternative employment as Junior Clerk in Personnel Branch, Nanded and relieved on 04.02.2013. It is further submitted that, the petitioner has made a representation dated 11.10.2010 to respondent No.3 DSC/RPF/Nanded for grant of travelling allowance and conveyance allowance for the period from 10.02.2010 to July 2010. But the TA bills of the petitioner were returned with the remarks of ASC. The petitioner re-submitted his claim on 01.12.2010 and made a representation on 17.12.2010 and 30.12.2011 for grant of travelling allowance, conveyance allowance and holiday encashment for the period, petitioner worked in special supernumerary post.

12] It is further submitted that, relying upon the Judgment of the High Court of Andhra Pradesh, petitioner

submitted a representation on 24.02.2012. It is submitted that, the said Judgment is not useful to the petitioner since said case is decided on distinct facts. It is submitted that, Rule No.93.6 of RPF Rules, 1987 envisage that, the temporary attachment of the RPF staff at other place of working. In the instant case, the petitioner has been medically de-categorized for RPF duties and is permitted to perform sedentary duties in a specially created supernumerary post, as such, said rule is not applicable to the petitioner. It is further submitted that, in regards to the payment of travelling allowance to some of the teachers of Nanded Division, the petitioner has to submit strict proof thereof to the establishment. Unless it is done, the petitioner cannot lay claim for such allowances. It is further submitted that, the contention of the petitioner that, some of the medical de-categorized RPF staff of Vijayawada Division was paid TA as per Judgment dated 17.12.2004 in the case of Sri. R. Malleswar Rao Vs. CSC is not correct. Sri. R. Malleswara Rao, SIPF / Nidadavolu of Vijayawada Division has been paid with TA for the period he was attached to Vijayawada before creation of supernumerary post in his favour. However, he has been re-directed to his previous post for continuing in supernumerary post. As

such, both the cases stand on different footing and do not give benefit to the petitioner.

13] It is further submitted that, as per the CSC / SC's letter dated 06.08.2004, the petitioner was attached to Nanded for Sedentary job not involving strenuous nature duties and created special supernumerary post at Nanded. As there are no sedentary or light jobs in RPF Post or duty post which is an Armed Force and the duties of RPF are quite distinct from those of other Railway Departments. The petitioner salary was drawn as he last worked in the same bill unit. The petitioner ought not to have stated that, he required for travelling from Parbhani to Nanded every day. The petitioner has to stay at Nanded where he has been posted for performing his sedentary duties. The petitioner did not do so thereby he is not entitled for travelling and contingent or conveyance allowance as claimed by the petitioner. It is further submitted that, the petitioner has sought information under Right to Information Act regarding eligibility of travelling allowance for the employee away from the Headquarters of an employee. It is for regular RPF duty post. In the case of petitioner, since he was medically de-categorized for RPF

duties and appointed for supernumerary post at Nanded for performing light job duties, he is not entitled to claim the benefits of travelling and other allowances etc. It is further submitted that, pay and allowance entitled by an employee, who has been worked under supernumerary post have been paid to the petitioner by the respondent office according to law and Rules and no allowances as claimed by the petitioner are allowed, and therefore, petitioner is not entitled to claim the same. It is categorically submitted that, there is no violation of any statutory provision or there is no willful breach of Rules made by the respondents as alleged by the petitioner. Therefore, the learned counsel appearing for the respondent Nos. 1 to 4 submits that, Petition may be dismissed.

14] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, learned counsel appearing for the respondent Nos. 1 to 4, with their able assistance, perused the pleadings, grounds taken in the Petition and annexures thereto and in particular reply filed by the respondents and the Judgment of the High Court of Andhra Pradesh. In the Year 2009, the petitioner met with an accident and has

undergone the operation of 'total hip replacement'. After medical examination, the Medical Authority of the respondents declared the petitioner unfit for Armed Force duty and recommendation for alternative employment of sedentary type of job by the Certificate dated 06.02.2010. The petitioner resumed his duty at RPF, Outpost, Parbhani on 08.02.2010. On the next day on 09.02.2010, the respondent No.4 directed the petitioner to report to Divisional Security Commissioner at Nanded for further duties. The petitioner reported to the Divisional Security Commissioner at Nanded for further duties. The petitioner was attached with the office of the Divisional Security Commissioner, Nanded from 09.02.2010 till 03.02.2013. Finally, the petitioner came to be absorbed as Junior Clerk and came to be posted at Personnel Branch of Nanded Division. The petitioner came to be relieved by the Assistant Security Commissioner, RPF, Nanded Division, by letter dated 04.02.2013. It is also not in dispute that, the petitioner made a representation dated 11.10.2010 to the Divisional Security Commissioner, Nanded for grant of travelling allowance and conveyance allowance for the period of 10.02.2010 to July, 2010. The said representation came to be replied by reply / letter dated 18.10.2010 by

making some remarks. The petitioner, again, made a representation to the respondent No.2 on 17.12.2010 and also on 30.12.2011 for grant of travelling allowance, conveyance allowance and holiday encashment. However, the petitioner was informed that, he is not eligible for the said allowances. Again, the petitioner made a representation dated 24.02.2012, stating therein that, the High Court of Andhra Pradesh at Hyderabad has ruled by its order dated 17.11.2004 that, the said allowances are permissible. However, the said representation was also not favourably considered. Therefore, it is not the case that, the petitioner was not pursuing the respondents for grant of any travelling allowance, conveyance allowance and holiday encashment. It is also admitted position that, though, the petitioner was declared unfit for Armed Force duty and recommendation for alternative employment of sedentary type of job by the Certificate dated 06.02.2010. The respondents, first time, absorbed him as Junior Clerk on 3rd February, 2013. It appears that, as per the Indian Railway Establishment Manual [IREM] [Vol.1, Chapter XIII, Rule No.1303], railway servants in Group [i] and [ii] of para 1302, ceased to perform the duty of their post they are holding from the date they are declared medically unfit for

the said post. The respondent Nos. 3 and 4 have not adhered to the said rule by asking the petitioner to perform the duties at the respondent No.3's office. It further appears that, the petitioner was allowed to continue at a place more than 4 months on temporary transfer contrary to the Rule 93.6 of the Railway Protection Force Rules, 1987. It is also not in dispute that, the petitioner has resumed his duty at RPF, Outpost, Parbhani on 08.02.2010 and on the next day i.e. on 09.02.2010, the respondent No. 4 directed the petitioner to report to the Divisional Security Commissioner at Nanded for further duties, by his letter dated 8th February, 2010. The said position continued till the petitioner was absorbed as Junior Clerk on 3rd February, 2013. The petitioner is right in contending that, his Headquarter was Parbhani and duty was assigned at Nanded, and therefore, he is entitled for travelling allowance. Apart from this, if the petitioner was asked to work on the holidays, there is no reason to dis-entitle him from receiving benefits, if other employees are granted such benefits. So far conveyance allowance is concerned, if similarly situated persons have been given said allowance, referred in paragraph 6 herein before, we do not see any reason why the petitioner should not be given such

allowances.

15] The learned counsel appearing for the petitioner is right in relying upon the Judgment of the High Court of Andhra Pradesh at Hyderabad, wherein somewhat similar issue was considered in respect of travelling allowance. If the respondents have some regards to the human rights they could not have turned down the representations of the petitioner for their own mistake in not absorbing him immediately on alternative employment of sedentary type of job and it was done first time on 3rd February, 2013.

16] Therefore, in the light of the discussion in the foregoing paragraphs, in our opinion ends of justice will meet in case the respondents are directed to reconsider the request of the petitioner for travelling allowance, conveyance allowance and holiday encashment in the light of observation made in this Judgment. However, needless to observe that, it will be open to the respondents, to calculate said amount by adopting procedure applied in similar cases, which are mentioned in para six herein before.

17] Rule made absolute in above terms. Writ
Petition stands disposed of accordingly.

Sd/-

[P.R.BORA]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE

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DDC