

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2018

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.35488 of 2003

R.Sethu Madhavan

...Petitioner

..Vs..

1.The Presiding Officer,
Central Government Labour Court,
Chennai.

2.The Divisional Railway Manager,
Chennai Division,
Southern Railway,
NGO Annexe, Park Town,
Chennai-600 003.

3.The Sr. Divisional Personnel Officer,
Chennai Division,
Southern Railway,
NGO Annexe, Park Town,
Chennai-600 003.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records related to the impugned award dated 04.04.2003 in C.P.No.44 of 1998 on the file of the 1st Respondent and to quash the same.

For petitioner : Mr.L.Chandrakumar

For Respondents: Mrs.T.P.Savitha for R 2 & R 3
R 1 - Court

ORDER

The prayer sought for in the writ petition is for a Writ of Certiorari calling for the records related to the impugned award dated 04.04.2003, in C.P.No.44 of 1998 on the file of the 1st Respondent and to quash the same.

2. The short facts which are required to be noticed for the disposal of this writ petition are as follows:

2.1. The petitioner joined in the Railway Service as an Assistant Station Master in the year 1989. Subsequently he was promoted to the post of Station Master in the scale of pay of Rs.5000-8000. While the petitioner was working as a Leave Reserve Station Master under the control of the Traffic Inspector, Tambaram, the applicant was required to move up to Chennai Fort towards Chennai Beach situated at 27 Kms from Tambaram and up to Singaperumal Koil towards Chengalpattu situated at 24 Kms from Tambaram.

2.2. It is the case of the petitioner that when a Railway Staff move 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 petitioner had been directed to be moved to stations situated at more than 8 Kms from his head quarters i.e., Tambaram to perform duties during the period between July 1997 and August 1998. Since during the period mentioned above, the petitioner had been pressed in to go for duty beyond 8 Kms from his head quarters i.e., at Tambaram, 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 petitioner, in order to get the said benefit, filed Claim Petition No.44 of 1998 before the Central Government Labour Court, Chennai. However, the Labour Court by order dated 04.04.2003, had dismissed the said petition. Aggrieved over the said order of dismissal made by the Labour Court in C.P No.44 of 1998 dated 04.04.2003, the petitioner filed this writ petition with the aforesaid prayer.

3. Mr.L.Chandrakumar, learned counsel appearing for the petitioner has made two fold submissions. Firstly, the learned counsel would submit that, the petitioner 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 in 1997 and 1998 where the petitioner has been pressed into service beyond 8 Kms from his headquarters i.e., at Tambaram. Secondly, the learned counsel would submit that, since the said benefits have been conferred on the petitioner as the Chennai City being

the A-1 City as per the Railway's classification and Tambaram being the headquarters of the petitioner also located within the Chennai City, the petitioner would be entitled for higher benefits, as per the rate fixed by the Railways in this regard.

4. The learned counsel for the petitioner, in support of his contention would rely upon the relevant provision on Indian Railways Establishment Code, where he rely upon the following provisions with regard to daily allowance.

SECTION VI - DAILY ALLOWANCE

1611. Rates of daily allowance - Daily allowance is admissible at the rate indicate below:-

Pay Range	Localities other than those mentioned in Col.3 and 4	B-I Class cities and expensive localities	A-Class cities and specially expensive localities
1	2	3	4
Upto Rs.1099	20	25	35
Rs.1100 and above but less than Rs.1400	30	40	50
Rs.1400 and above but less than Rs.1900	35	45	55
Rs.1900 and above but less than Rs.2800	40	50	65
Rs.2800 and above but less than Rs.5100	50	60	75
Rs.5100 and above	60	65	80

1612.The classification of localities for rates of daily allowance admissible for halts on duty is related to classification of the place for purposes of Compensatory (City) Allowance.

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.

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 hours 30% 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.

5. By relying upon these provisions under the Railway's Establishment Code referred to above, the learned counsel would submit that, the petitioner admittedly had been in duty for several months beyond 8 Kms from his headquarters i.e. at Tambaram and therefore he would be entitled to get the daily allowance as per the rates admissible at the relevant point of time. The learned counsel would further submit that this aspect has not been considered by the Labour Court in proper prospective and therefore dismissal order made by the Labour Court through the impugned order is liable to be interfered with.

6. Per contra, Mrs.T.P.Savitha, learned Counsel appearing for the respondents-Railways would draw the attention of this Court that the petitioner is not entitled for getting higher daily allowance by treating his duty as beyond 8 Kms in A1 City.

7. In this regard, the learned counsel would further submit that, previously only Mumbai and Delhi were considered to be A1 cities for the purpose of higher payment of allowance and perquisites to railway employees. Subsequently, Chennai and Calcutta had been added in the list of A1 City and such Cities had been added only from 98 and therefore the petitioner cannot make a claim for higher

allowances for the year 1997 and till 18.05.98 as at that point of time, the Chennai City was not considered to be A1 City for the purpose of higher allowances and therefore the very basis of the claim made by the petitioner cannot stand therefore the order passed by the Labour Court is to be sustained.

8. In this regard, the learned counsel for the respondents would rely upon the Railway Board proceedings dated 16.10.97, which reads thus:

Consequent upon the decision taken by the Government on the recommendations of the Fifty Pay Commission relating to Compensatory (City) Allowance and House Rent Allowance vide Ministry of Finance's Resolution No.50(1)/IC/97 dated 30.9.1997 and promulgation of Railway Services (Revised Pay) Rules, 1997, the President is pleased to decide that in modification of Railway Board's Letter No.PC_65/HRA-1/3 dated 21.7.65 as amended from time to time, the Compensatory (City) Allowance and House Rent Allowance to all categories of Railway employees shall be admissible at the following rates:

(i) COMPENSATORY (CITY) ALLOWANCE:-

Pay Range (Basic Pay) Amount of CCA in class of cities(Rs.Per month)

	A-1	A	B-1	B-2
[1]	[2]	[3]	[4]	[5]
Below Rs.3000 p.m.	90	65	45	25
Rs.3000 p.m. to Rs.4499 p.m.	125	95	65	35
Rs.4500 p.m. to Rs.5999 p.m.	200	150	100	65
Rs.6000 p.m. and above	300	240	180	120

9. The learned counsel would further submit that, in the Railway Board proceedings dated 16.10.97, the Chennai City has not been shown as A1 city for the purpose of HRA and CCA and that is the reason why it necessitated the Railway Board to issue a further notification in R.B.E.No.111/98 dated 04.06.98, which reads thus:

Subject: Classification of Calcutta and Chennai

cities as 'A-1' class for the purpose of grant of House Rent Allowance.

[No.E(P & A)II-97/HRA-19, dated 4.6.98]

Attention is invited to Board's Letter No.PC-V/97/1/7/13 dated 16.10.1997 (Bahri's RBO 1997 P 151) regarding classification of various cities/towns for the purpose of House Rent Allowance (HRA/Compensatory (City) Allowance as per the recommendations of the Fifth Central Pay Commission (Vth CPC). Based on the population criteria recommended by the Vth CPC, two principal metropolitan cities of Delhi and Mumbai have been classified as A-1, whereas the other two principal metro cities of Calcutta and Chennai were classified as 'A' for the purpose of grant of HRA.

2.A number of representations have been received from different quarters urging restoration of parity between the principal metropolitan cities of Delhi, Mumbai, Calcutta and Chennai in the matter of HRA. The matter has been considered and the President is now pleased to decide that, in partial modification of the above mentioned letter dated 16.10.1997, the principal metropolitan cities of Calcutta and Chennai will be classified as 'A-1' class cities for the purpose of grant of HRA to the Railway employees.

3.All other conditions governing grant of HRA under the existing rules/orders shall continue to apply. These orders shall be effective from 18.05.1998.

4.This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

10. By relying upon R.B.E.No.111/98, the learned counsel for the respondents would submit that, since the said order shall be effective from 18.05.1998 as mentioned therein for getting higher HRA, the Railway Employees who were working at Chennai City can claim the same only from 18.05.1998 and not prior to the said date. The reason given, according to the learned counsel for the respondent, was that the Chennai City along with Calcutta have been inducted into category of A1 City only from 18.05.1998.

Therefore, the claim made by the petitioner between the period of 97 and 98 seeking higher daily allowance on the ground that he had been moving beyond 8 Kms from the headquarters Tambaram which is a part of Chennai City which was one of the A1 City as classified by the Railway's, cannot be accepted as at that point of time the Chennai City was not classified as A1 City.

11. I have heard the submissions made by both sides and also perused the materials placed before this Court.

12. There is no dispute with regard to the claim made by the petitioner that he was working at the headquarters Tambaram during the relevant point of time i.e., 1997-1998 and he had been pressed into service beyond 8 Kms towards Chennai Beach side. The headquarters of the petitioner and the distance he travelled beyond 8 Kms, certainly come under the jurisdiction of the Chennai City. The only issue is, whether the Chennai City was the A1 city as classified by the Railway Department during the relevant point of time and if so whether the petitioner is entitled to get higher daily allowance for his duty beyond 8 Kms from headquarters.

13. In this regard, it is the contention of the petitioner 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.

14. If Clause 1614 is applied to the case of the petitioner, certainly he is entitled to draw travelling allowance or daily allowance for his travel beyond 8 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 petitioner also claimed that, he is not only entitled for the daily allowance for rendering duty of 8 Kms from the headquarters during the relevant point of time but also would be entitled to get higher daily allowance at the rate specified by the Railway for those who worked in A1 City.

15. Therefore, the only controversy to be resolved herein is that, during the relevant point of time i.e., 97 to 98, whether the Chennai City was declared or considered to be a A1 city for the purpose of paying higher allowances to its employees.

16. In this regard, it is the vehement contention of the learned counsel appearing for the Railways that, only from 18.05.1998, Chennai along with Calcutta has been inserted as one of the A1 City for the purpose of house rent allowance. However, this contention has been refuted by the learned counsel appearing for the petitioner by relying upon the Railway Board proceedings dated 16.10.1997. In the said notification, Clause 7 reads thus.

"7. These orders shall be effective from 1.8.1997. For the period from 1.1.1996 to 31.7.1997, the above allowances will be drawn at the existing rates on the notional pay in the pre-revised scale".

17. Therefore, there is no doubt that the said proceedings issued by the Railway Board dt.16.10.1997 has come into effect from 1.8.97. Along with the said proceedings two annexures have been given. The first annexure under the heading "list of Cities" where compensatory [City] allowance is admissible to Railway Employees, some of the cities in various states have been given under four categories such as A1, A, B1 and B2. In the another annexure under the heading, "list of Cities" house rent allowance admissible to Railway Employees have been given. Various cities have been given for the said purpose of HRA under four categories viz; A1, A, B1 and B2 as well as C.

18. If we have a careful perusal of the said annexure, in A-1 with regard to compensatory allowances in the State of Tamil Nadu, five Cities have been shown. Out of the five, Chennai City has been shown under the category A-1. Coimbatore and Madurai have been shown under category B1. Salem, Trichy have been shown under the category B2. Like that, in annexure 2, for the purpose of HRA, in respect of Tamil Nadu, number of Cities and Towns have been shown in Category C. In Category B2, the Cities of Coimbatore, Madurai, Salem, Trichy have been shown. There is no categorization under B1 and A1 at Tamil Nadu for the purpose of HRA. The Chennai City is lone City in Tamil Nadu have been shown at Category A only, and not at A1 in annexure made for HRA.

19. Only in that context, it seems that there had been number of representations to the Railway Board/Railway Department that, even though Delhi and Mumbai have been inserted under A1 Category Cities for the purpose of HRA also under Railway Board proceedings dated 16.10.1997, the other two Metropolitan Cities viz; Chennai and Calcutta had

not been included, and therefore those Cities also should be included. Only on considering the said request made by the employees belong to these Cities and considering the other aspects, the Railway Board issued R.B.E.No.111/98 on 04.06.98 with effect from 18.5.1998 including Chennai and Calcutta Cities as A1 Cities for the purpose of HRA in annexure appended to Railway Board's proceedings dated 16.10.1997.

20. Only by relying upon RBE.No.111/98 dated 04.06.98, it was argued by the learned counsel appearing for the Railways that since Chennai City has been inserted with effect from 18.5.1998, the claim, if at all made by the petitioner for getting higher daily allowance can be considered only from 18.05.1998 and not prior to the said date. The said argument is to be rejected for the simple reason that, the said insertion of Chennai City under A1 category by virtue of RBE No.111/98 along with Calcutta City were made only with respect to Annexure 2 pertaining to house rent allowance of Railway Employees.

21. The fact remains that, insofar as the city compensatory allowance is concerned annexure 1 attached with the Railway Board letter dated 16.10.1997 is very well having Chennai city as one of the A1 City and it is found place in the said annexure itself. Therefore, the omission knowingly or inadvertently taken place in including Chennai and Calcutta City as A1 City for the purpose of HRA in A1 alone had been rectified in RBF No.111/98. However, insofar as the compensatory allowance for the Chennai City is concerned, it is already in the A1 category under first annexure along with the Railway Board's letter dated 16.10.1997.

22. Here in the case in hand, the petitioner seeks only dearness allowance for which he is entitled to and he had been pressed into service beyond 8 Kms from his headquarters located at Tambaram from Chennai City which has been already declared and considered as A1 City right from 1.8.97, the date on which the Railway Board's letter dated 16.10.1997 came into effect.

23. Since the petitioner seeks such daily allowance in consonance with clause 1614 of Indian Railways Establishment Code for the period from July 97 till August 98, as a Railway Employee working in A1 City, certainly he would be entitled to claim the same.

24. However, these aspects have not been considered in proper perspective by the Labour Court in the

impugned order and therefore erroneously the claim made by the petitioner had been rejected by the Labour Court. Hence, the same is liable to be interfered with.

25. In view of the above, the following orders are passed in this writ petition.

(i) The impugned order dated 04.04.2003 in C.P.No.44 of 1998 is set aside. There shall be a direction to the Railway to calculate the admissible daily allowance for the petitioner for his working period between July 97 and August 98, by taking into account the Chennai City as A1 City, pursuant to the Railway Boards proceedings in PC-V/97/1/7/13 dated 16.10.1997, and accordingly, calculate the daily allowance claimed by the petitioner at the rate specified for A1 City and pay the same to the petitioner within a period of eight weeks from the date of receipt of copy of this order.

(ii) With these directions, the writ petition is allowed. There shall be no order as to costs. It is made clear that while calculating the said admissible dearness allowance as indicated above, amount already paid at the old rate by treating Chennai City as A city can be deducted and the remaining amount alone shall be paid to the petitioner.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Presiding Officer,
Central Government Labour Court, Chennai.

2. The Divisional Railway Manager,
Chennai Division,
Southern Railway,
NGO Annexe, Park Town, Chennai-600 003.

3. The Sr. Divisional Personnel Officer,
Chennai Division,
Southern Railway,
NGO Annexe, Park Town, Chennai-600 003.

+1cc to Mr. L. Chandrakumar, Advocate SR.No. 57394

+1cc to Mrs. T. P. Savitha, Advocate SR.No. 57049

W.P.No.35488 of 2003

A.SK (24/04/2019)