

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 1109 of 2024

Date of hearing	Order with signature of Judge
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Fresh case

1. For orders on CMA No.4340/2024 (U/A)
2. For orders on office objections at Flag-A
3. For orders on CMA No.4341/2024 (Ex./A)
4. For orders on CMA No.4342/2024 (Stay)
5. For hearing of main case

07.08.2024

Mr. Mukesh Kumar G. Karara, Advocate for petitioners.

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- 1.** Urgency is granted.
- 2.** Office objections be complied with within seven (07) days.
- 3.** Exemption is granted subject to all just legal exceptions.

4 & 5. Learned Counsel for the petitioners submits that the petitioners are Pakistan Railway Police ('PRP') officials, and their job requires them travelling along with the train from one station to the other; thus, making them eligible for TA/DA, which facility has been provided to them from inception of their service subject to furnishing appropriate boarding and lodging documents, which process turned up to be cumbersome, and to make such operation more smoother and to bring such allowance in harmony with other law and enforcement agencies in a meeting chaired by the Federal Minister for Pakistan Railways dated 20th November 2021 (page 101), it was inter alia agreed to fix such TA/DA for 20 days per month in the salary of PRP personnel on the analogy of the Provincial Police and to abolish the lengthy procedure of granting TA/DA claims, and to avoid any fake claim, and the financial requirements were agreed to be met out from the allocation of budgets of each financial year in this regard.

Per learned Counsel, thereafter, the Ministry of Railways, Islamabad vide letter dated 19.01.2022 conveyed the approval of the competent authority i.e. Secretary / Chairman, Railways and allocated funds amounting to Rs.203.000 million to PRP vide letter dated 20.01.2022 under head of account FDA-A0120Q. The Member Finance vide letter dated 20.01.2022 directed the Financial Advisor & Chief Accounts Officer, Pakistan Railways Headquarters Office, Lahore for inclusion of the 20 days FDA in the monthly salaries of the PRP personnel. This approval was based on a comprehensive assessment of the necessity and benefits of FDA for the PRP personnel.

Per learned Counsel, similar allowances are already being paid to the employees of Pakistan Railways Running Staff at the ratio of 55% as a running / mileage allowance, but on the contrary, no such allowance was ever paid to the PRP escorting officials.

Per learned Counsel, it is well established in legal precedents that once a right is conferred, it cannot be unilaterally withdrawn. This principle is reinforced by various apex court judgments that emphasize the protection of vested rights and restrict recovery of amounts once granted. For instance, he placed reliance upon the case of Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi v. Jalal-ud-Din (PLD 1992 Supreme Court 207), whereby the Supreme Court held that as far as recovery of the amount in question is concerned, the principle of *locus proenitentiae* would apply, and the appellants are not entitled to recover the amount.

However, per learned Counsel, the Secretary / Chairman Railways through a letter dated July 30, 2024 without any cogent reason issued the impugned letter directing Member Finance of Pakistan Railways to immediately stop the said practice of giving 20 days' fixed TA/DA as well as institution of enquires against those who have received such benefits

over the years and taking action against them, so that such paid amount could be recovered.

Strangely, per learned Counsel, the said officer (respondent No.1) was the member of the High Powered Committee in the capacity of Additional General Manager/Traffic Railways, who took a decision on 20th November 2021 for making payment of such 20 days' fixed TA/DA, therefore, he was not a stranger to the practice and in fact was involved in all the further deliberation, which resulted into making regular payments of such TA/DA to the petitioners.

Not only so, learned Counsel has drawn Court's attention to applicable Financial Management and Powers of Principal Accounting Officers Regulations, 2021, and states that such a decision could not have been unilaterally made by the Secretary individually making the impugned letter without jurisdiction. Such a concept of making recoveries of such fixed TA/DA, which had already been incorporated into monthly salaries of Pakistan Railway Police officers / officials is inconceivable as the tax deduction has already been made from the said allowances that have been paid to the petitioners, and that the tax having been deposited to the Federal Board of Revenue, against which there is no possibility of reimbursement, causing irreparable financial burden to the petitioners.

Counsel further adds that the concerns were raised on payment of this FDA, and the subject matter is still under the audit against Para 12088/2022-23 of the DAC. He further adds that the petitioners are formed part of the federal law and enforcement agency, however, still are not reasonably compensated as compared with the other law and enforcement agencies including Provincial Police, FIA etc. where such allowance is astronomically high. Thus, a serious case of discrimination is made out against the petitioners. Such payment of 20 days' fixed

allowance was even endorsed by the Finance Division under letter dated 3rd July 2017 and is allowed for operational duties.

According to the previous mode of making such TA/DA payments, Counsel has referred to Paragraph “L” of the grounds taken in the petition, which shows that the financial implication, in case the previous system is resorted to, would be more than 70% high than the current value of 20 days’ TA/DA being granted, therefore, even the decision is not sound one on financial basis.

Counsel states that on account of these submissions, the same order has caused serious prejudice to the interests of the petitioners and has also caused unrest among the force allegedly demoralizing in performing their security duties.

Contention raised by learned Counsel merits consideration. Issue notice to the respondents as well as Deputy Attorney General for **20th August 2024**. In the meanwhile, operation of the impugned letter dated 30th July, 2024 (page 143) or any action taken in pursuance thereof to remain suspended till the next date of hearing.

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Abdul Basit