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Central Adminisrative Tribunal
Principal Bench

O.A.No.2364/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 6th day of May, 2003

Sh. Naresh Khatri
JIO-II/MT
s/o Sh. Lal Chand Khatri
r/o H.No.1964, Railway Road
Narela, Delhi - 110 040. ... Applicant

(By Advocate: Ms. Jasvinder Kaur)

Vs.

Union of India through
Director, Special Protection Group
Cabinet Secretariat
No.1, Safdarjung Lane, New Delhi. ... Respondents

(By Advocate: Sh. B.K. Aggarwal, through Shri Rajeev Bansal)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Applicant impugns respondents' order dated 1.3.2002 wherein the claim for arrears of HRA, CCA and TPT Allowance for the period 1.6.2001 to 31.3.2002 has been denied. Applicant has sought quashment of the aforesaid order with direction to pay arrears of the aforesaid allowance.

2. Applicant while working in Intelligence Bureau (Ministry of Home Affairs) [hereinafter called as "IB"] was sent on deputation to Special Protection Group [hereinafter called as 'SPG']. The pay and allowances of applicant were fixed by an order dated 8.6.2001.

3. Before joining duty in SPG on deputation, applicant was aware that SPG has its own residential complex at Dwaraka and that it is essential to take the Government accommodation. Since applicant had his

own house in Delhi, he represented to parent cadre, IB(MHA) seeking exemption for taking the accommodation in SPG. In response to the representation, respondents by an order dated 21.6.2001 applicant was asked to furnish the proof of residence and other documents, which he accordingly furnished to the respondents by a letter dated 5.7.2001. Claim of applicant was rejected on 23.8.2001. On further representation, the same was turned down vide order dated 1.5.2002.

4. Applicant vide his letter dated 5.3.2002 sought relieving and repatriation and to clear his HRA, CCA and TPT allowances, the same remain unsatisfactory, giving rise to the present OA.

5. Ms. Jasvinder Kaur, learned counsel appearing on behalf of applicant, alleges violative of Articles 14 and 16 of the Constitution, by contending that there are more than 12 cases, who are the employees of SPG, who were not in occupation of SPG accommodation are still drawing HRA, CCA and TPT Allowances, etc. and in proof annexed their pay slips, despite this, his request to remain in his own accommodation has been turned down arbitrarily.

6. On the other hand, learned proxy counsel for respondents by placing reliance on a decision of Apex Court in M. Purshotham v. Union of India & Others, 1995(Sup.4) SCC 637 contended that when an employee is offered accommodation and does not occupy it, he is not entitled for HRA and other allowances.

7. According to him, as one of the conditions to join SPG for operational staff was to stay at his ancestral house without getting proper outliving permission which is violative of the laid down instructions and stayed at his own risk which amounts to misconduct, as such he is not entitled and eligible for HRA or Transport Allowances.

8. As far as treatment meted out to similarly circumstance employees, it is contended that as per policy, outliving permission is not granted to operational staff, however, relaxation were allowed on merits of each case.

9. I have carefully considered the rival contentions of the parties and perused the material on record. The contention putforth by the learned counsel that in other cases a wrong order has been passed to those allowed HRA, without outliving permission, would not vest the applicant a right to claim the same, cannot be admissible. However, no such plea has been taken by the respondents in their reply or in the order passed, as such a plea which has not been taken either in the order or in the reply cannot be supplemented in the light of the decision of the Apex Court in M.S.Gill v. Chief Election Commissioner & Others, (1978) 1 SCC 405.

10. As the other members of the operational staff who had also not complied with the instructions and living outside the premisses of SPG are being paid regularly HRA and other allowances, the claim of the applicant which was identical and being situated at

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par with them, and equally in all respects, cannot be meted out a differential treatment which would be an antithesis to the enshrined principle of equality laid down under Articles 14 and 16 of the Constitution of India. No reasonable explanation has been put forth to justify the discrimination meted out to applicant.

11. In the above circumstances, OA is partly allowed. Impugned order is quashed and set aside. Respondents are directed to reconsider the request of applicant for payment of arrears of HRA, CCA and TPT to applicant in the light of the other similarly circumstance have been accorded the same, within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)

/rao/