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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2417/2002

New Delhi this the 12th day of March, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Amar Singh Chauhan,
S/o Shri Chhider Singh,
R/o A-86, Friends Enclave,
Mundka,
Delhi.

-Applicant

(By Advocate Shri Shyam Babu)

-Versus-

1. Govt. of NCT of Delhi,
through its Chief Secretary,
Players Building, I.P. Estate,
New Delhi.
2. Commissioner of Police,
Police HQ, I.P. Estate,
New Delhi.
3. Dy. Commissioner of Police,
H.Q. (Delhi),
Police Head Quarter, I.P. Estate,
New Delhi.

-Respondents

(By Advocate Mrs. Jasmine Ahmed)

ORDER (ORAL)

Applicant impugns respondents' order dated 17.6.2002 whereby his claim for grant of HBA has been turned down. He has sought quashment of the same with direction to allow him HRA/CHRA w.e.f. 7.8.91 with arrears and interest.

2. Applicant is working as a Constable in Delhi Police. He was terminated under Rule 5 of the CCS (TS) Rules, 1965 on 4.10.95. He preferred OA No.2765/92 whereby by an order dated 3.3.97 he has been reinstated in service with all consequential benefits. Accordingly orders of reinstatement were issued on 12.11.97.

3. Applicant's services were again terminated on 19.1.98 and he preferred OA-732/98 the same has been allowed on 15.6.91 with a direction to reinstate him and to treat the intervening period in accordance with rules with liberty to proceed applicant in accordance with rules.

4. On 5.11.99 applicant made a representation to the DCP (PCR) claiming HRA/CHRA as he was living with his family at A-86, Friends Enclave, Mundka, Delhi. In response to this by an order dated 28.6.2000 applicant has been informed that in pursuance of second termination DE has not yet been finalised he could not be accorded HRA. As soon as the intervening period is decided he is at liberty to make an application for HRA.

5. In CP-269/99 decided on 14.7.2000 applicant has been accorded opportunity to agitate his grievance through original proceedings.

6. By an order dated 1.3.2001 applicant was imposed upon a minor penalty of censure for the alleged misconduct and the intervening period has been decided as period spend on duty.

7. Applicant preferred a representation on 27.3.2001 for grant of HRA/CHRA w.e.f. 7.8.91, which has been forwarded by the letter dated 11.4.2001. In response to his application by a noting by the DCP, PCR on 28.6.2000 applicant has been directed to collect arrears.

8. When the HRA has not been paid to applicant he made a request vide his letter dated 3.11.2001 which has been forwarded. By an order dated 6.2.2002 request of

applicant for HRA has been considered and as the Additional Commissioner of Police has not been satisfied with the genuineness of the claim and reasons for the delay as per GFR 83 claim has been rejected.

9. Applicant preferred a representation against the same but the same was also turned down, giving rise to the present OA.

10. Learned counsel for applicant Sh. Shyam Babu contended that there is no delay as per GFR 83 in presentation of the claim. According to him applicant was permitted earlier and was re-instated by the court with all consequential benefits, which includes HRA as well. On his second termination and on re-instatement he preferred his claim and in response thereof he has been advised to make his claim after the decision in the DE. Immediately on finalisation of the enquiry he has preferred an application which has been rejected without any basis and credible reasons by the competent authority.

11. Shri Shyam Babu further stated that once the permission has been accorded by the DCP with reference to his application for HRA and he was directed to collect the arrears the decision which has not been reviewed holds the field and applicant cannot be denied his HRA/CHRA. As the delay was properly explained with continuity the decision of the Additional Commissioner of Police is without application of mind. In so far as genuineness of the claim is concerned, once the DCP has directed him to collect the arrears he was satisfied with regard to the genuineness of the claim, respondents are estopped from taking a different stand.

12. As the decision of the Additional Commissioner is non-speaking without any reasons, being an executive authority the action should be fair and in absence of any reasons the same is arbitrary violative of Articles 14 and 16 of the Constitution of India.

13. On the other hand, respondents' counsel Smt. Jasmine Ahmed vehemently rebutted the contentions of applicant and contended that case of applicant was examined in the light of GFR 83 and in case claim is six years older it is to be investigated by the Head of the Department as to the satisfaction about the genuineness of the claim on the basis of supporting documents and valid reasons for delay in preferring the same. As the same has been considered by the authorities the same was found to be inordinately delayed without any explanation the same was rightly rejected.

14. In so far as communication by the DCP to collect the arrears the same pertained to the intervening period when applicant was terminated and re-instated back but would not construe that the arrears pertained to HRA and CHRA.

15. I have carefully considered the rival contentions of the parties and perused the material on record. As per GFR 83 in case claim of a government servant for HRA has been allowed to remain in abeyance for a period exceeding two years and also where the claim is six years older is to be entertained only after pre-checks on the basis of supporting records as to the valid reasons for not submitting the claim in time. From the perusal of

the orders passed by the Additional Commissioner of Police on 6.2.2002 I find the same as bald, mechanical and non-speaking. No reasons have been accorded to come to the conclusion that why the authority was not satisfied with the genuineness of the claim and reasons for delay. Being an executive authority it is more onerous upon him to record reasons in support of the order which is in consonance with the principles of natural justice.

16. From the perusal of the facts and circumstances of the case I find that applicant was terminated twice and on second occasion liberty has been given to respondents to hold an enquiry. On his request for HRA he has been informed that as the DE has not been finalised he is at liberty to prefer a fresh application for HRA which can be granted from the beginning. In pursuance thereof, applicant immediately on finalisation of the disciplinary proceedings made request for payment of HRA and on this by a noting of DCP, PCR dated 27.6.2001 where reference to his application for HRA is made the DCP, PCR directed him to collect the arrears. This clearly shows that the genuineness of the claim and the delay part has been found genuine. Moreover, from the perusal of these documents it transpires that there was no delay attributable to applicant for delay in preferring his case which has been preferred in time but kept in abeyance by the respondents. In this view of the matter it cannot be concluded that decision of respondents dated 6.2.2002 cannot be countenanced as the reasons for the delay were bona fide, genuine and not attributable on the part of applicant. Moreover, nothing has been brought on record to establish that applicant, otherwise under the rules is ineligible for grant of HRA/CHRA.

17. In the result, for the foregoing reasons, orders passed by the respondents cannot be sustained in law and are accordingly quashed and set aside. The OA is allowed with the direction to respondents to re-consider the claim of applicant for payment of HRA/CHRA w.e.f. 7.8.91 and the same be paid to him with all arrears, 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)

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