

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the 2nd day, Tuesday of June Two Thousand And Twenty

PRESENT:

THE HON'BLE MR. P. MADHAVAN, MEMBER(J)

THE HON'BLE MR. T. JACOB, MEMBER(A)

O.A.310/1261/2017

M. Manoharan,
S/o. Munuswamy,
Aged about 50 years,
Employed as:
Agriculture Fieldman,
Central Cattle Breeding Farm,
Alamathi, Chennai-600 052.

.....Applicant

(By Advocate: M/s. M. Gnanasekar)

Vs.

Union of India Rep. by
The Director,
Central Cattle Breeding Farm,
Alamathi, Chennai-600 052.

.....Respondents.

(By Advocate: Mr. J. Vasu)

ORDER

(Pronounced by Hon'ble Mr. P. Madhavan, Member(J))

This is an OA filed seeking the following reliefs:-

“(i) To set aside the order No.2/13/Const/15-16/1379 dated 16.10.2015 passed by the respondent and to direct the respondent to refund the HRA (House Rent Allowances) recovered from the monthly salary of the applicant from the month of October 2015 till date and further not to make any recovery towards HRA in future from the applicants' salary.

(ii) Pass such further orders as are necessary to meet the ends of justice.

(iii) Award exemplary cost and thus render justice.”

2. The brief facts of this case is as follows:-

The applicant is working as 'Agriculture Fieldman' and the respondent had allotted a Type-III quarters to the applicant and he was directed to occupy the quarters on or before 1.8.2015. The quarters was allotted even-though he has not applied for quarters. The quarters was in a dilapidated condition. The doors and windows were damaged, no proper electrical wiring, no drainage facility, no proper compound walls and a lot of bushes were there around the quarters. Hence, he gave a representation to rectify the defects and permit him to occupy

thereafter. On 13.10.2015, the respondent informed that quarters is ready for occupation after repair and he should occupy before 16.10.2015. According to the applicant the said quarters was built more than 40 years ago and is unfit to occupy even-after the stated repair. The respondents began to cut HRA w.e.f. 16.10.2015. The action of the respondent is illegal. He is a Kidney Patient and had undergone renal transplantation. The applicant has a right to live in a clean place with clear atmosphere. Article 21 gives a right to decent life. So he seeks to set aside the impugned order dated 16.10.2015 and refund the HRA deducted from salary.

3. The respondents filed a reply denying the allegations in the OA. The applicant is exaggerating the facts of the case and gives a false picture before the Tribunal. The OA is filed to get the HRA in cash by the applicant. The applicant being in the Grade Pay of Rs. 4200/- is eligible for Type-III quarters. The applicant was allotted one quarters for his residence (Type-III) as per order dated 06.08.2015. The representations were given only as an excuse not to occupy the allotted quarters. The allegation that wiring, toilets, roof, wall leakage etc are false. There has never taken place any snake bites in the quarters premises. The CCBF had undertaken necessary minor repairs. Type-III

Quarters are not provided with individual compound walls. At present, there is only one occupant in Type-III Quarters. Since the two eligible employees are not occupying the quarters, the department was compelled to deduct the HRA and it was informed to him on 16.10.2015. According to them, when the quarters is lying vacant, HRA cannot be released. The shrubs are growing due to non-occupancy and it is cleared only occasionally.

4. The respondents had also filed an additional reply stating that they had undertaken white washing, repair of pipeline, carpentry work etc spending an amount of Rs. 26,320/-. According to the respondents, the premises gives best living condition with greenery, fresh air which is necessary for healthy living. Till the year 2012 all the Type –III quarters were occupied and vacancy occurred due to retirements. HRA is allowed only in lieu of quarters where department cannot provide quarters.

5. The applicant had filed MA 648/2019 for appointing a commission to inspect the quarters and to know the present condition. This Tribunal allowed the MA as it is necessary to ascertain whether the quarters allotted is in a habitat condition. Accordingly, the quarters and premises were got inspected by Executive Engineer, CPWD. The inspection was done and a

detailed report with photographs were filed. Objection were also filed by applicant. On a perusal of the report, we find that the quarters was not having the following essential things for habitation:-

- "i) No electric connection and energy metre*
- ii) Wiring could not be checked as there is no electric supply;*
- iii) No water supply to the quarters at present;*
- iv) Overhead tank for storage of water drainage;*
- v) Manholes of sewerage-lines are damaged*
- vi) Water supply system inside house damaged and has to be repaired.*
- vii) Cleaning of floors etc has to be done."*

According to the Executive Engineer, if the above essential repairs are done, quarters will be fit for occupation.

6. The main objection raised by the applicant is that quarters is not in an occupying condition.

7. But the counsel for the respondents would submit that many of the discrepancies found was due to lack of occupation from 2012 onwards. If the applicant is not occupying the quarters, there is no purpose in giving electrical supply to the building. If HRA is permitted to be released, nobody will occupy the quarters. The respondents are put to-much difficulty if the employees refuse to occupy quarters and maintenance is thrust

upon the department without paying the nominal license fee for it. This is not a case where applicant is ready to occupy the quarters. He wants to get the HRA and want to keep the quarters vacant. The respondent invited our attention to the decision of the Apex Court in the case of Director, Central Plantation Crops Research Institute, (**CPCRI Kasagargod & Ors v. M. Purushothaman & Ors. reported in 1994 (3) SLJ 237.** The Hon'ble Supreme Court referring to the OM issued by the Ministry of Finance dated 27.1.1965 in para 4 and held that

" 4. xxxxxx xxxxxxxx xxxxxx. It must be remembered in this connection that the Government or the organization of the kind of the appellant spends huge public funds for constructing quarters for their employees both for the convenience of the management as well as of the employees. The investment thus made in constructing and maintaining the quarters will be a waster if they are to lie unoccupied. The HRA is not a matter of right. It is in lieu of the accommodation not made available to the employees. This being the case, it follows that whenever the accommodation is offered the employees have either to accept it or to forfeit the HRA. The management cannot be saddled with double liability viz., to construct and maintain the quarters as well as to pay the HRA. This is the rationale of the provisions of paragraph 4 of the said Government Office Memorandum."

8. We had considered the rival contentions and perused the pleadings and judgments relied on.

9. On a reading of the decision of Supreme Court, it can be seen that HRA is only an allowance which can be claimed if there is no quarters available at the place of work of the employee. It cannot be claimed as monetary benefit. In this case, the quarters was allotted to the applicant in the years 2015 itself and it is lying vacant till the Commissioner inspected the building. Most of the defects noted can occur if the building is not occupied for years together. The defects noted can be repaired without much difficulty.

10. The counsel for the applicant would contend that the quarters is not at all habitable and safe. We have gone through the report of Executive Engineer and photographs taken by him. We find that the quarters can be used if a proper cleaning is undertaken and water supply and electric connection is restored. The premises are also good with lot of greenery as submitted by the respondent. The applicant has refused to occupy his quarters and it is also one of the reasons for the present situation. The order to occupy the quarters which is available cannot be considered as illegal or arbitrary in this case. There

is no reliable materials to show that premises is unsafe and dangerous for occupation etc.,.

11. Accordingly, we do not find any reason to set aside the order dated 16.10.1995. Since it has come out that there is no essential water supply, tank for storing and electric supply, we direct the respondents to provide the same urgently if the applicant gives his readiness to occupy the same and pay electric charges and water charges. They will also undertake remaining necessary repairs in a phased manner without delay if the applicant occupies the quarters.

12. OA is disposed of accordingly. No costs.

(T. JACOB)
MEMBER(A)

(P. MADHAVAN)
MEMBER(J)

.06.2020

Asvs