

LIBRARY

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 1772 of 2016

Date of order: 27.2.2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Soubir Kumar Bhattacharya,
 Son of Late Santi Ranjan Bhattacharya (Retired)
 From the post of Helper II
 Assistant Materials Manager (D),
 North East Frontier Railway,
 Malda Town,
 P.O. – Jhaljhalia,
 Pin – 732102 having permanent
 Resident of 35/13, Sarsuna Main Road,
 Kolkata – 700 061.



... Applicant

- V E R S U S -

1. Union of India,
 Through the General Manager (P),
 North-East Frontier Railway,
 Maligaon, (HQS),
 Guwahati,
 Assam,
 Pin – 781011.
2. The Divisional Railway Manager (DRM),
 North-East Frontier Railway Div.,
 Katihar,
 P.O. – Katihar,
 Bihar,
 Pin – 845 105.
3. The Deputy Chief Material Manager,
 N.F. Railway,
 New Jalpaiguri,
 District – Darjeeling,
 West Bengal,

Pin - 735 101.

4. The Assistant Material Manager (Store),
 Diesel Locomotive Shed,
 Malda Town,
 P.O. - Jhaljhalia,
 Pin - 732 102.

... Respondents

For the Applicant : Mr. B. Bhusan, Counsel

For the Respondents : Mr. P. Prasad, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal in third stage litigation under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

"(a) Do issue mandate upon their men and agent and each of them to forthwith rescind, recall and/or withdraw the purported speaking order dated 28.9.2016 whereby the claim of the respondent not granted;

(b) Issue direction upon the Respondents to make a payment of rest of HRA in tune of the 20% from 12.7.2010 to 09.01.2011 applicable during erstwhile place of posting including the interest at the rate of 18% per annum till the realization of total sum;

(c) Issue direction upon the Respondents, their men and agent to make the payment of 33 days from 05.01.2011 to 06.02.2011 during the place of posting at NJP including the interest at the rate of 18% per annum till the realization of total sum;

(d) Issue direction upon the Respondents, their men and agents to make the payment of unpaid HRA from March, 2011 to October, 2013 as per the applicable rate at the place of posting including the interest at the rate of 18% per annum till the realization of total sum;

(e) Issue direction upon the Respondents, their men and agents to grant HRA with an immediate effect that has been stopped illegally from March, 2016 till the date of superannuation inspite of acceptance of request for cancellation of quarter;

(f) Issue direction upon the Respondents and each of them to forthwith certify and transmit all the papers and documents in connection with the instant application before this Hon'ble Tribunal for kind perusal and on such perusal do consonable justice to the applicant;

(g) To pass further and other order/orders as this Hon'ble Tribunal may deem fit and proper.

Abhijit

(h) Costs and incidentals thereto."

2. The submissions of the applicant, as made through his Ld. Counsel, is that the applicant was appointed as Helper II (Gr. 'D') post with the respondent authorities on 6.10.1978 and he superannuated on 30.9.2016.

The applicant had earlier approached this Tribunal in O.A. No. 804 of 2012 to press his claims for payment of his legitimate dues and, this Tribunal, had disposed of the said O.A. on 15.10.2015 with the following orders:-

"4. The learned counsel for the respondents, placing reliance on the supplementary affidavit filed by his clients, would argue that virtually understanding the partial genuineness of the claim of the applicant a sum of Rs. 1,13,492/- was paid and over and above that there are no more dues payable to the applicant. Whereas, the learned counsel for the applicant would invite the attention of this Court to various details available on record and submit that the total dues come to Rs. 2,03,21/- and as such, a sum of Rs. 90,000/- and add is yet to be paid to the applicant.

The matter get boiled down to the level of mere evaluating the correctness of the accounts. On the one hand, the railway authority would contend that as per their calculation they correctly paid the dues, whereas the applicant would deny the same. In this factual matrix we could evaluate the correctness of the calculation pertaining to the applicant. Hence in these circumstances we would like to pass the following direction without going into the merits of the matter that the Respondent authorities concerned either himself or by an authority to be deputed to him:

Within thirty days from the date of receipt of a copy of this order shall give a personal hearing to the applicant and well before that applicant could like a detailed calculation and statement and during such personal hearing the authority shall explain to him the details and thereafter pass a speaking order within a period of one month and communicate the same to the applicant.

5. This O.A. is accordingly disposed of. No costs."

The respondents, thereafter, issued an order dated 27.11.2015, vide which his claims were allegedly not met, and, hence, the applicant approached this Tribunal in second stage litigation in O.A. No. 350/500/2016. The said O.A. was filed praying for relief, inter alia, on his HRA, as follows:-

"(a) x x x x x

(b) Issue direction upon the respondents to make a payment of rest of HRA in tune of the 20% from 12.7.2010 to 9.1.2011 applicable during erstwhile place of posting including the interest @ 18% per annum till the realization of total sum;

Usha

(c) Issue direction upon the respondents, their men and agents to make a payment of 22 days from 10.1.11 to 3.2.11 during the place of posting at NJP including the interest @18% per annum till the realization of total sum;

(d) Issue direction upon the respondents, their men and agents to make the payment of unpaid HRA from March, 2011 to October, 2013 as per the applicable rate at the place of posting including the interest @18% per annum till the realization of total sum;

(e) Issue direction upon the respondents, their men and agents to grant HRA with an immediate effect that has been stopped illegally from March, 2016 inspite of acceptance of request for cancellation of quarter at the verge of superannuation;

(f) x x x x x

(g) x x x x x."

The Tribunal disposed of the said O.A. on 20.6.2016 with the following observations:-

“8. In view of the provisions of the Railway rules quoted supra HRA could be forfeited if the Railway servant refused Government accommodation or surrendered the said accommodation. In no case cancellation of the quarter itself would lead to forfeiture of HRA. Further Ld. Counsel pleaded about grant of HRA for the period he was not allotted any quarter and the allotment made on 17.2.2016 was cancelled to till his retirement, whereas in the relief prayed for he has asked for HRA for the period of 12.7.2010 and 9.1.11 and again from March 2011 to October 2013 along with various other dues. Therefore in my considered opinion justice would be met if a direction is given up the authorities to give a personal hearing to the applicant and pass appropriate orders within two months from such hearing.

9. Accordingly it is ordered that the applicant shall present himself before the authorities for a personal hearing within four weeks from the date of receipt of a copy of this order, and shall place in writing his grievance in regard to payment of any nature fell due to him. Upon receipt of such representation and grant of personal hearing the authorities shall look into the grievance, consider the same in accordance with law and pass appropriate reasoned and speaking order within two months thereafter. In case nothing stands in the way, appropriate payments including unpaid HRA shall be accorded to the applicant within one month thereafter.”

The respondent authorities issued another speaking order on 26.9.2016 in compliance thereof (Annexure A-13 to the O.A.) which the applicant would choose to challenge in the instant Original Application while reiterating his claims as prayed for at (b), (c), (d) and (e) in his earlier O.A. 500/2016.

To support his claim, Ld. Counsel for the applicant, inter alia, would advance the following grounds:-

(a) That, a detailed calculation statement was a condition precedent prior to disposal of his prayers by the respondent authorities in compliance to O.A. No. 804 of 2012. The respondent authorities,

hmb

however, failed to enter into the merit of his claims and admissibility thereof.

(b) As the applicant has received only 10% HRA out of 30% HRA as admissible in Metropolitan postings, balance 20% is yet to be paid to the applicant.

(c) Further, as the applicant had got a "fit on duty" certificate on 3.2.2011, denying him HRA for 22 days from 10.1.2011 to 3.2.2011 is an arbitrary act of the respondent authorities.

(d) The applicant was not given HRA nor allotted government accommodation between March, 2011 to October, 2013.

(e) Although the respondent authorities cancelled the allotment of official accommodation, they refused to pay him HRA from March, 2016 onwards till his superannuation, which by itself is an illegal and arbitrary act violating the extant rules.

3. The respondent authorities, per contra, would reiterate the contentions of their orders dated 27.11.2015 (Annexure A-3 to the O.A.) as well as orders dated 26.9.2016 (Annexure A-13 to the O.A.) which was issued in compliance to the directions of the Tribunal in O.A. No. 804 of 2012 and in O.A. No. 500 of 2016 respectively.

In particular, the respondents would furnish with their reply a statement (Annexure R1) whereby the applicant has himself admitted that he has received all his dues as directed by the Tribunal in its orders dated 15.10.2015 excepting bonus for certain period, and, according to the respondents, the applicant is estopped at this stage to reopen such issues and deny receipt of benefits, once admitted in writing before the respondent authorities consequent to a personal hearing and upon inspection of documents.

Hab

4.1. We have carefully considered the rival contentions of both Ld. Counsel and have examined pleadings and documents on record.

4.2. Annexure R-1 to the O.A. which is a statement of the applicant dated 29.11.2015 states as follows:-

“Compliance of order dated 15.10.2015, passed by Hon’ble CAT/Calcutta Bench in O.A. No. 804/2012 (Soubir Kr. Bhattacharya -vs.- N.F. Rly.)

Ref.: 1) CAT/Calcutta Bench O.A. No. 804/2012 dt. 15.10.2015.
2) GM(P)/MLG’s L/No. E/170/Legal Cell/NS/1772/2014 dt. 16.11.2015.

In reference to the above, I have seen all documents towards my claim mentioned at judgment of Hon’ble Courts. I have satisfied as per record placed in my front. All dues have been cleared as per rule. Except Bonus for the 2009-2010 i.e. for 12 months and arrear bonus for the year 2010-2011 i.e. for 7 months for which bill have been prepared by office amounted to Rs. 8860/- in the year 2012 and 4624/- in the year 2014. I will confirm it on availability of statement of bank account.

(Soubir Kumar Bhattacharya)
Upgraded Helper under CDMS/Stores/MLDT”



The following are inferred from above statement:-

- (i) That, the statement is issued in connection with compliance of orders dated 15.10.2015 issued by this Tribunal in O.A. No. 804 of 2012.
- (ii) The applicant has seen all the documents relating to his claim as advanced in the said O.A.
- (iii) He had satisfied himself with reference to the records placed before him.
- (iv) All dues apart from certain elements of bonus have been cleared as per rules.
- (v) The applicant has raised disputes regarding bonus for a specific period of time.

4.3. The applicant has approached this Tribunal in O.A. No. 804 of 2012. He had sought following relief with particular reference to HRA:-

“ x x x x x x

[Signature]

(h) An order be passed directing the respondents to pay House Rent Allowance from the month of March, 2011 and onwards continuously;

x x x x x x."

As the applicant had accepted that all HRA dues as claimed by him prior to November 2015 was received by him vide his statement dated 29.11.2015, he is barred by estoppel from reopening the issues and challenging the same in subsequent litigation.

Estoppel, an equitable doctrine that prevents a party to a law suit from asserting a right or fact that is contrary to the party's past conduct and admissions, is squarely applicable herein. In particular, judicial estoppel that prevents a party from taking a position contrary to a stand that he has taken consequent to the earlier O.A., is invoked.

4.4. Therefore the only surviving claim of the applicant is that HRA was stopped illegally from March, 2016 and, that, the same was not paid to him till his superannuation in September, 2016.

The respondents in their speaking order dated 26.9.2016 (Annexure A-13 to the O.A.) has opposed the applicant's claim as follows:-

"3) Indian Railway has a facility of Railway accommodation as per entitlement of Employee. At all major settlement area Railway accommodation is available. As per extent rule on submission of application from Railway employee, accommodation are provided to him. But if that time, no Railway accommodation is lying vacant at that area, on submission of house rent allowance application, House Rent Allowance is payable. On submission of application of Railway accommodation, after observing due procedure i.e. searches of vacant railway accommodation and submission of claim for house rent allowance, after obtaining approval of competent authority, house rent allowance has been paid to you from 1.11.13.

4) Since administration provide you railway quarter as per you requested & you refused to occupy the quarter. Until the administration could not provide you Railway quarters, you were paid HRA but after providing Railway quarter which you refused to occupy, no HRA is admissible."

Upon perusal of records, however, we find that, on 26.2.2016, (Annexure A-11 to the O.A.), the respondent authorities had conveyed to the applicant the following Office Order:-

[Signature]

NORTHEAST FRONTIER RAILWAY

Office of the
 Sr. Divl. Mech. Engineer/DSL
 Diesel Loco Shed Malda Town
 N.F. Railway.

Office order

Baby Bibi, peon under AMM/D/MLDT submitted unwillingness to occupy the quarter No. 428/3-G Type-II at F.S. Rly colony and Shri Soubir Kr. Bhattacharjee Helper under AMM?MD/MLDT submitted unwillingness to occupy the Quarter No. 420/I, Type-I at F.S. Rly Colony. Hence the office order vide No. M-258/Q/Pt.XV/395 Dt. 7.02.16 may be treated as cancelled and next office order will follow.

Sd/-
 (S.Saha)
 ADME/D /MLDT
 For Sr. DME/D/MLDT

M-258/Q/Pt.XV/468

Dt. 26.02.2016

Forwarded for information and necessary action to:

SE/D/MLDT
 SE/Works/OMLF
 SE/Elect./MLDT
 CDMS/D/MLDT
 OS/P in office
 Branch Secretary, NFREU/NFRMU, AISCTREA/MLDT.

Sd/-
 (S.Saha)
 ADME/D /MLDT
 For Sr. DME/D/MLDT

NORTHEAST FRONTIER RAILWAY

ST396310

The respondent authorities clearly conveyed that the allotment of official quarter to the applicant stood cancelled as on 26.2.2016. They have not furnished any further records to prove that any further office

hsl

order had followed after 26.2.2016 and prior to the applicant's superannuation. We also detect from the sporadic pay slips annexed by the applicant that March, 2016 onwards, the applicant was not paid any HRA.

4.5. The applicant would cite before us the provisions of RBE 163/99 dated 12.7.1999, which reads as follows:-

" R.B.E. No. 163/99

Subject: Admissibility of House Rent Allowance in the event of non-acceptance of surrender of railway residential accommodation - PNM/NFIR Item No. 21/99.

Reference: Board's letters No. E(P&S)II-87/HRA-15 dated 16.5.1988 (Bahri's RBO 1988, Vol. I, P.III) and No. E(P&A)II-95/HRA-3 dated 14.2.1996 (Bahri's RBO 1996, P.14)

[No.E(P&A)II-99/HRA-2, dated 12.7.99]



In terms of the instructions contained in Board's letter No. PC-67/JCM-2 dated 10.7.1967, and as modified/clarified from time to time, Railway employees who are eligible for Railway accommodation and (i) who do not submit applications for such accommodation; or (ii) who, after submitting applications for such accommodation, refuse to accept accommodation when offered/allotted; or (iii) who, after having accepted such accommodation, surrender it, may be paid House Rent Allowance, if otherwise admissible, on fulfillment of the prescribed conditions. Powers to issue sanction for eligibility to House Rent Allowance in such type of cases were delegated to the General Managers and other Head of Organisations, directly controlling allotment of quarters to Railway employees, to be exercised personally by them in consultation with the Associate Finance vide Board's letter dated 16.5.1988 ibid. This concession is, however, not admissible to employees for whom Railway accommodation is specifically earmarked or to those employees, whose occupation of Railway quarter is essential for easy accessibility during emergencies, efficient discharge of their duties etc."

Perusal of RBE 163/99 clarifies that HRA is admissible to employees who refused to accept offered/allotted accommodation. In the applicant's context, the administration had cancelled the allotment made to him based on his unwillingness.

Accordingly, the applicant is entitled to receive his HRA from period March, 2016 to September, 2016 i.e. upto the date of his superannuation, if not released earlier.

5. We would hence direct the competent respondent authority to revisit the applicant's claim on the payment of HRA from March, 2016

W.H.B.

onwards, dispose of the same in accordance with law, particularly with reference to RBE No. 163/99, and arrange to remit such HRA to the applicant as per his entitlements within a period of 12 weeks from the date of receipt of a copy of this order.

6. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP

