

(22)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 858/1998

NEW DELHI THIS...2nd...DAY OF ^{Sept}AUGUST 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Attar Singh,
House No. 29/A
Gitanjali Park, Sagarpur,
New Delhi 110045

.....Applicant

(By Shri N. Ranganathaswamy, Advocate)

VER SUS

1. Union of India, through
the Secretary,
Ministry of Finance,
North Block,
New Delhi - 110011
2. The Financial Advisor,
Defence Services,
Min. of Defence (Finance)
South Block, New Delhi
3. The Controller General of Defence,
Accounts, West Block, R K Puram,
New Delhi
4. The Controller of Defence Accounts,
(BR), Kashmir House, New Delhi

.....Respondents

(By Shri Mohar Singh, Advocate)

O R D E R

Hon'ble Shri Govindan S. Tampi, Member (A)

Relief sought for by this OA are as below:

- a) to direct the respondent to refund the house
rent allowance for the period from 1-12-93 to
30-11-96 @ Rs. 28,800/- which was recovered
from retiral benefits paid during 3/97;
 - b) to allow house rent for two months i.e.
1.12.96 to 31.1.97 @ Rs.800/-p.m.;
 - c) to refund Rs.4,705/- which was recovered as
assessed amount of rent for the period from
1.12.96 to 31.1.97;
 - d) to allow interest @18% p.a. for the amount
mentioned in (a), (b) and (c);
 - e) to award cost;
- h

33

2. Sh. N. Ranganathawamy, learned counsel appeared for the applicant and Sh. Mohar Singh learned counsel for the respondents.

3. Sh. Attar Singh, the applicant who joined Defence Accounts Department retired on superannuation while holding the post of Dy. Controller of Defence Accounts. The applicant was posted to one of the Static Units of GREF on 3.11.93, to function as Accounts and Audit Officer. Those from Defence Accounts, when posted to GREF unit, with single accommodation, are entitled for HRA. While he worked in the Static Unit at Bikaner, his family continued at Meerut, his previous station and accordingly HRA was drawn. The applicant was only given 50% CCA at Bikaner. Respondents thereafter sought to recover HRA taken by him from 3.11.93 to 31.1.97 and recovered it from his retiral benefits. His representation against the above did not get any favourable response. Hence his this OA. The applicant pleads that denial of HRA, which meant denial of reimbursement for hiring accommodation for his family was improper; respondents had not notified that those posted to static units of GREF will be denied HRA on the ground that single accommodation was provided to him, while being posted at GREF he was forced to keep his family at the early station only as he had single accommodation, and that any clarification issued by the respondents could not have any retrospective effect. This was forcefully argued by Sh. Ranganathaswamy.

4. In reply it is pointed out that the applicant on his promotion and posting as Asstt. Controller of Defence Accounts (ACDA) at Bikaner w.e.f. 30.11.93, occupied Govt. accommodation at Bikaner and was therefore not entitled for HRA, in terms of Ministry of Finance OM dated 27.11.65. Besides, HRA was not applicable to GREF Officers at Static Station, where accommodation - single accommodation included - is provided, in terms of Ministry of Transport letter dated 12.7.93, which was extended to Defence Accounts Officers also. As the applicant occupied single accommodation, throughout his stay, he could not be granted HRA and he was also liable to pay rent and other charges. The applicant did not pay the rent and also had claimed and obtained HRA @ Rs.800/- at his previous station. Therefore on its being noticed, the amount of Rs.28,800/- was recovered from his retirement dues. His representations have been replied on the basis of clarification of 4.3.97 and 16.6.97. He was not entitled for HRA which was clearly barred under rules. Only supervisory and other personnel of GREF (not officers) were entitled to free single accommodation in static units. Officers would have to

....3/-

pay rent, as prescribed . As the applicant did not intimate about his staying in permanent single accommodation, and had received. HRA(which was paid inadvertently) the dues were recovered from his pension dues and correctly too. It is pointed out that the applicant did not seek married accommodation at Bikaner but chose single accommodation and could not have claimed HRA, and it had to be recovered having been paid wrongly. There was no objection to the applicant's bringing his family to Bikaner, where he was posted, but he had sought to retain them at Meerut for his convenience, ^{for} drew HRA @Rs.800/- admissible at Chandigarh, where from he moved to Bikaner. Shri Mohar Singh, appearing on behalf of the respondents fully endorsed and reiterated the above.

5. In the rejoinder the applicant had stated that he had moved his family to Chandigarh, where from he was shifted to Bikaner and that only as he was eligible and was given free single accommodation and not granted family accommodation, he had correctly ^{asked for} ~~entitled~~ and was given HRA. It should therefore not have been recovered.

6. I have carefully deliberated on the rival contentions. The admitted facts are that the applicant, an Asstt. Controller of Defence Accounts, who moved on posting from Chandigarh to a GREF Unit at ^{Bikaner} ~~Gwalior~~, was given free single accommodation but he had asked for and was granted HRA for his family staying back at Meerut. This was noticed when the Officer had retired on superannuation and an amount of Rs. 33,867/- was recovered from his leave encashment. While the applicant holds that he was fully entitled for free single accommodation at Bikaner as well as HRA @ Rs.800/- a month for the family staying away, respondents hold that he was eligible for neither and therefore whatever has been given to him - at his instance or inadvertently by the respondents - was correctly due for recovery. These are totally irreconcilable positions in law. The applicant, who moved from Chandigarh to Bikaner on assignment with GREF belonged to the Indian Defence Accounts Deptt. on 30.11.93, was not covered by the instructions of the Ministry of Surface Transport letter

No. F. 81(1) -Estt dated 12.7.93, directing that H.R.A. was not admissible to GREF Officers posted at static stations who have been provided with any accommodation including single accommodation, till 30.9.94, when the letter No. AN / XIV /14004 / III/ Vol. 10 (PC) was extended to Defence Accounts Officers. Though the order had been made effective from 1.9.88, the same cannot be made away basis for effecting recoveries; till 30.9.94. Simultaneously those attached to GREF while working in non - static units are entitled to free single accommodation, in static units this was not admissible to officers, but only to supervisory and other personnel, in terms of Surface Transport letter No. F. 81 (1)/64-Estt. 17084/DGBR/E2A (T&C) dated 9.1.81, read with B.R. Regulations. This aspect had been reiterated and clarified in CDA (BR) letter No. P/406/P&A/DGBR-VI dated 13.11.96. The applicant was therefore, not entitled for rent free accommodation for the period of his stay at Bikaner from December 93 to January 1997. With the result the recovery of rent/water charges for the period amount of Rs.4705/- cannot be questioned but the drawal / payment of rent of rent @ Rs.800/- from December 93 to April 94 (four months) = Rs.3,200/- was incorrectly levied *levied* and is therefore liable to be repaid . Since the

..... 5/-

h

36

recovery of this amount was improper the applicant would be entitled for interest worked out @ 9% on that amount, from the date of the applicant's date of superannuation to its ultimate release. All other reliefs claimed by the applicant have no basis and therefore have to be repelled.

7. In the result the OA succeeds, but only marginally and is accordingly disposed of.

Respondents are directed to release to the applicant an amount of Rs. 3,200/- being the HRA, the applicant was entitled to get from 30.11.93 ^{P.a.} and 30.4.94, with simple interest @ 9% from the date it was wrongly recovered i.e. date of the applicant's retirement in 1997, to the date of its ultimate release and disbursement in terms of this order. All other reliefs prayed for by the applicant do not have any basis and are accordingly dismissed. No costs.

(Govindan S. Tampi)
Member (A)

Patwal/