

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

(b)

OA No.2007/95

New Delhi this the 21st day of May, 1996.

Hon'ble Mr. B.K. Singh, Member (A)

Hon'ble Dr. A. Vedavalli, Member (J)

S.M. Verma,
S/o Sh. Jaimini Verma,
E-32, Guru Nanak Road,
Adarsh Nagar,
Delhi-110033.

...Applicant

(Applicant in person) Vs.

1. The Secy, Ministry of Urban Affairs
& Employment, Nirman Bhawan, New Delhi.

2. The Director General of Works,
C.P.W.D., New Delhi. ...Respondents

(By Advocate Sh. J. Banerji, proxy counsel for
Sh. Madhav Panikar)

ORDER (Oral)

(Hon'ble Mr. B.K. Singh, Member (A))

This application is directed against the order No.DG(W)/BFR/13-88/Spl.Incentive/Pak/1323-1325 dated 6.8.92. In nutshell, the order permits retention of Govt. accommodation at any place to officials on transfer to Indo-Pak/Indo-Bangladesh Border but does not provide equivalent benefit of additional House Rent Allowance to officials retaining rented accommodation for bonafide use of transfer to Indo-Bangladesh Border (IBB) Zone and, therefore, it is argued that this is discriminatory and is violative of Articles 14 and 16 of the Constitution of India.

2. The admitted facts are that the applicant was transferred in May, 1993 to Indo-Bangladesh Border Zone with headquarter at Siliguri (West Bengal). He has worked there from 24.5.93 to 7.7.95. ~~He has~~ since been transferred

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back to Delhi. Annexure-A-18 of the paperbook shows that his family moved to Siliguri sometime in August, 1993 and he has charged T.A. for his wife and two sons to join at Siliguri.

3. All the circulars placed on record indicate the risk prone and hard areas where a Govt. official has been permitted to retain the Govt. accommodation at the previous place of posting particularly in case of North-Eastern States. The instructions are there that they can retain the Govt. accommodation on payment of normal licence fee one stage below of their entitlement for a period of two years which is the normal cooling off period for officers of All India/Central Services in such areas and the spirit of the circular is that they are likely to be shifted back after a couple of years. Similar facility has been given to officers who are being transferred from other places to Jammu & Kashmir, Andaman and Nicobar Island and Lakshadweep. A person is allowed to retain Govt. accommodation at the previous place of posting in case of transfer to the North-Eastern State/Jammu & Kashmir and it may be the same accommodation or one stage below the entitlement since he is not expected to carry his family to those areas because of the difficult law and order situation prevailing in such areas. The Andaman and Nicobar Island and Lakshadweep are not so difficult from the point of view of law and order but they are difficult from the point of accessibility and want of educational facilities and other necessities of life and, therefore, this benefit has

also been extended to the officers who are transferred to those two areas. The applicant argued that similar facility has been extended to officers serving on Indo-Bangladesh Border Zone for retention of their general pool accommodation at their previous station of posting. A plain reading of the various circulars issued by Govt. clearly indicates that the officer who may either retain the same general pool accommodation at the last station of his posting or alternatively accommodation of one type below to the type of accommodation he was occupying may be offered to him if he requests for the retention of accommodation for bona fide use of the members of the family. For retention of a private accommodation additional H.R.A. is permissible provided it is for bona fide use. It is also a fact that the applicant has been writing to Govt. of India and, therefore, a direction was given by the Tribunal to dispose of his representations on the subject of the reimbursement of the additional cost incurred by him for retention of the private accommodation when he was shifted to Siliguri till his shifting back to Delhi. He has stated that he has incurred more than Rs.20,000/- on this and inspite of his repeated requests the Govt. has not acceded to his requests.

4. The followings reliefs have been sought in the O.A.:-

"(i) That the respondents be directed to pay Additional House Rent @ Rs.800/- p.m. totalling Rs.20,697/- for the period 24.5.93 to 19.7.95, during which period the applicant performed official duty at

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Siliguri under Indo-Bangladesh Border Zone including joining time of 12 days from 8.7.95 to 19.7.95.

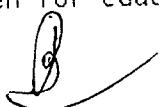
(ii) That the respondents be directed to pay interest at the rate of 18% per annum compounded monthly on the arrears of H.R.A. from the date of actual accrual (Viz. 24.5.93) to the date of actual payment.

(iii) That the respondents be directed to pay cots at Rs.1000/-."

5. On notice, the respondents filed a reply contesting the application and grant of reliefs prayed for.

6. We have heard the applicant in person and Sh. J. Banerji, learned proxy counsel for Sh. Madhav Panikar, learned counsel for the respondents.

7. The learned counsel for the respondents has clearly stated that the Govt. has not taken any policy decision for retention of any private accommodation at the various places of posting by any officer who is under orders of transfer to Indo-Bangladesh Border. There is no such instruction for IBB. People have been permitted extra House Rent for retention of private accommodation if the same is required for bona fide use. That facility has been extended to Jammu and Kashmir also. The various Annexures do not mention IBB Zone for such facility and, therefore, he is in no position to say anything on this since this involves a major policy decision. He has further argued that Siliguri is not a risk prone area from the point of view of law and order situation and we find that finest schools are located in Darjeeling where even the officers and the affluent people send their children for education and



there are a large number of schools located in Siliguri, New Jalpaiguri and Darjeeling Hill area. The area cannot be called as a problematic area at all and cannot be compared either with North-Eastern States or Jammu & Kashmir where the situation is affected by the worst kind of militancy and terrorism. The affidavits filed by the applicant clearly show that his children were not studying in any school at all either in Siliguri or in Delhi. Therefore the purpose of retaining the private accommodation at Delhi is not clear. The house could have been retained for the education of children when the applicant was at Siliguri. The averments made by him in the OA and the arguments today advanced that the children and his wife remained with him and, therefore, there is no justification for retention of the private accommodation at Delhi. Secondly, this appears to be a waste of time for the children if they were deprived of educational facilities by parents. If the applicant was interested in future career of his children he should have left his wife at Delhi to take care of his children by retaining private accommodation. Unfortunately, this has not been done by the applicant. His wife and the children remained all through his stay for two years in Siliguri without going to any school and this is exactly what the affidavit states. The transfer being an incident of service, one has to join the service knowing fully well that he may not be in a position to carry his children all the time with him and he has to cut his own wants and his own interests to educate the children by keeping them in some



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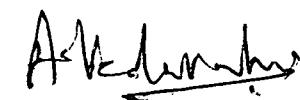
school having hostel facilities and this is exactly what is being done by the officers who have an All India transfer liability. This is precisely the reason why the officers are permitted to retain Govt. accommodation or private accommodation paying a higher rent also for keeping the family behind. The family is kept behind for education of children. On facts also no case is made out for payment of the rent for retaining a house for the bonafide use of the members of the family and payment of additional rent is also not permitted by the Govt. when there was no one living in the house for the period when his family stayed in Siliguri. There is no rule or provision for IBB under which the case of the applicant is covered. No right accrues by filing representation and by only stating that Article 14 is attracted and, therefore, this claim of his should be reimbursed, we are not convinced. If a house is retained it must be used for some bona fide use. There is no instruction or provision which covers the IBB. This is a major policy decision and it will have to be taken by the Ministry of Urban Development in consultation with the Ministry of Home and Department of Expenditure, Ministry of Finance and we are not competent to issue any direction to Govt. in regard to any policy decision since this will affect the finances of the Govt. The application fails on merits and is dismissed, but without any order as to costs.

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8. Before parting, we would like the respondents to dispose of all the pending representations of the applicant by a speaking order within a period of three months from the date of receipt of a certified copy of this order.



(Dr. A. Vedavalli)
Member(J)



(B.K. Singh)
Member(A)

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