

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 348 of 2019

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Sri Pradeep Kumar Sahu S/o Late Maheswar Sahu aged about 60 years At/Po- Balia, Dist- Balasore Odisha, PIN-756056

.....Applicant

VERSUS

1. Union of India, represented through General Manager, South Eastern Railway, Garden Reach Kolkata-43.
2. The Divisional Railway Manager, S.E. Railway, Kharagpur, Po. Kharagpur, Dist. Paschim Medinipur, West Bengal, PIN- 721301
3. The Addl. Divisional Railway Manager S.E. Railway, Kharagpur, Po. Kharagpur, Dist. Paschim Medinipur, West Bengal, PIN- 721301
4. The Sr. Divisional Personnel Officer, S.E. Railway, Kharagpur, Po. Kharagpur, Dist. Paschim Medinipur, West Bengal, PIN- 721301
5. The Sr. Divisional Operations Manager, S.E. Railway, Po. Kharagpur, Dist. Paschim Medinipur, West Bengal, PIN- 721301

.....Respondents.

For the applicant : Mr. C. Jena, Counsel

For the respondents: Mr. S.K. Ojha, Counsel

Heard & reserved on : 09.09.2020

Order on : 23.09.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed this OA under the section 19 of the Administrative Tribunals Act, 1985 being aggrieved by non-disbursement of his claim of House Rent Allowances (in short HRA), praying for the following reliefs:-

“ i) An order do issue directing the respondents to pay arrears of HRA from the Month of MAY-2011 to July, 2014 and Dec-2018 to January-2019 with 12% interest.

ii) any other order (s) as the Hon'ble Tribunal deem proper in this case.”

2. The case of the applicant is that after he was posted at ROP (Rupsa Jn.) in Balasore district on 27.4.2011, he submitted an application dated

11.5.2011 (Annexure-A/2) to the Respondent No.5 for sanction of HRA in his favour as at ROP there was no vacant Type IV quarter, to which he was eligible as per the Railway Board instructions dated 27.1.2011 (Annexure-A/1). Vide letter dated 27.6.2011 (Annexure-A/3), he was informed to apply for Type II quarter that was available in ROP. In response, the applicant informed in his application dated 11.7.2011 (Annexure-A/4) to the Respondent No.5 requesting for payment of HRA since the vacant Type II quarter was not as per his eligibility and he had to stay at Balasore to take care of his family. When no decision was taken, the applicant submitted an appeal dated 27.10.2011 followed by reminders addressed to the Respondent No.3 requesting for payment of HRA. As no decision was taken on his appeal, he submitted another application dated 7.10.2012 (Annexure-A/6) addressed to the Respondent No.2.

3. The Respondents issued a letter dated 9.7.2013 (Annexure-A/7) rejecting the claim for HRA as one Type II quarter was vacant at ROP. Finally, the applicant was granted HRA w.e.f. 7.8.2014 and his claim for HRA from 1.5.2011 to 6.8.2014 was rejected by the Respondents vide letter dated 24.8.2018 (Annexure-A/14). In the meantime the applicant was transferred to Balasore w.e.f. 11.11.2018 and he again applied for sanction of HRA vide his letter dated 27.11.2018 (Annexure-A/15). Though the applicant was sanctioned HRA w.e.f. 1.2.2019, but his claim for HRA for two months from 1.12.2018 till 31.1.2019 has not been accepted by the Respondents, stating that the HRA is payable from the date certified by the accommodation controlling authority that no quarter of the entitled class was available for the applicant.
4. The respondents resisted the OA in the Counter by stating that vide letter dated 21.9.2012 (Annexure-R/2 of the Counter), the appeal dated 27.10.2011 for grant of HRA while working in Rupsa was rejected on the ground that the applicant was junior to another official at the same station and that there was one Type II quarter vacant for allotment to the applicant being junior. The applicant submitted another appeal dated 7.10.2012 (Annexure-A/7), which was also rejected on the same ground. The applicant again submitted appeal dated 5.5.2014, which was examined with reference to the seniority of the applicant at Rupsa and he was granted HRA w.e.f. 7.8.2014 vide Memorandum dated 7.8.2014 (Annexure-R/3 of the Counter).
5. It is further stated in the Counter that after sanction of HRA w.e.f. 7.8.2014, the applicant submitted a representation dated 10.5.2017 (Annexure-A/13 of the OA) for sanction of HRA in his favour from

11.5.2011 to 6.8.2014, which was also declined by the respondents vide order dated 24.8.2018 (Annexure-A/14 of the OA). After the applicant's transfer to Balasore w.e.f. 11.11.2018, his HRA was stopped from 1.12.2018. After considering his application dated 27.11.2018 (Annexure-A/16 of the OA), the competent authority examined the same with reference to the rules and granted the HRA w.e.f. 30.1.2019 and not from 1.12.2019 as claimed by the applicant. It is also averred in the Counter that the applicant cannot club the claim of HRA from 2011, which was delayed and a separate cause of action, with his claim for December, 2018 and January, 2019.

6. The applicant has filed Rejoinder to the Counter, stating that the certificate of the accommodation controlling authority was not required when no quarter as per the applicant's eligibility was vacant in Rupsa. It is stated that the order at Annexure-A/14 is challenged in this OA and such action of the respondents was not as per the rules. It is also averred in the Rejoinder that there was no necessity of the certificate of the accommodation controlling authority when no quarter was vacant at Balasore and hence, the reason indicated by the respondents for not allowing HRA for the month of December, 2018 and January, 2019 is not acceptable.
7. Heard learned counsel for the applicant and the respondents, who reiterated the grounds mentioned in their respective pleadings. Besides, the ground of delay in pressing the claim for HRA from May, 2011 till 6.8.2014 was raised by learned counsel for the respondents since the claim for that period was rejected by the respondents in 2012 and 2013 vide orders dated 21.9.2012 (Annexure-R/2) and dated 9.7.2013 (refer para 2H of the Counter). Learned counsel for the applicant replied to the said objection that the authorities finally rejected the claim of HRA for the aforesaid period vide order dated 24.8.2018 (Annexure-A/14) and hence, there is no question of limitation in pressing for the claim for the said period. He also submitted that the applicant has filed the MA No. 416/2019 for condoning the delay, if any in filing the OA.
8. Before considering merit, it is necessary to consider the issue of limitation for adjudication of the claim of HRA for the period from May, 2011 till July, 2014 raised in this OA. Learned counsel for the applicant submitted that since the claim was rejected by respondents vide order dated 24.8.2018 (A/14), the aforesaid claim in the OA is not barred by limitation. It is noticed from the order dated 24.8.2018 that there was no reference to the earlier orders issued in 2012 and 2013 rejecting the applicant's claim. The reason furnished in the above order is that as per

the circular, HRA is payable from the date certified by the accommodation controlling authority. Since there is no reference to earlier decision of the authorities on this issue, the order dated 24.8.2018 is considered as a fresh cause of action. Therefore, it cannot be said that the claim for the period in question is barred by limitation and the respondents' contention in this regard is not acceptable and the MA No. 416/2019 filed by the applicant to condone the delay, if any in filing the OA is allowed in the circumstances.

9. The applicant has not furnished any rules or instructions of the Railway Board in support of his claim. Therefore, the rule circular No. 35/96 dated 4.4.1996 enclosed at Annexure-R/4 of the Counter is considered to adjudicate the claim. It is also noticed that the applicant in his Rejoinder has not objected to the applicability of the circular No. 35/96 to his case. In this case, the applicant was offered a Type II quarter in Rupsa, for which no application for allotment was submitted by him. Above circular provides that in such cases the HRA is admissible in such type of cases with the following condition:-

“(b) the number of units available for allotment does not exceed the number of eligible employees and there is no prospect of any residential unit remaining vacant as a result of such refusal, surrender or non-application for accommodation.”

The said circular also provides that in case of surrender of accommodation, the HRA would be payable from the date as certified by the accommodation controlling authority certifying that no accommodation in the entitled class is available for allotment.

10. The applicant contends in Rejoinder that accommodation controlling authority's certificate was not necessary in his case since there was no quarter as per his eligibility (i.e. Type IV) was vacant in Rupsa. But the guidelines at Annexure-R/4 do not have any provision to make the HRA admissible from the date claimed even without the said certificate. The applicant has also not furnished any guidelines or rules in support of his contentions that he was entitled for HRA from May, 2011 till July, 2014 irrespective of the date that would be certified by the accommodation controlling authority. It is noted that the justifications for allowing HRA w.e.f. 7.8.2014 instead of May, 2011 have been furnished in para 2F and 2H of the Counter, by stating that since there was a SMR in Rupsa senior to the applicant and one Type II quarter is vacant, the HRA was not admissible to the applicant. The applicant was informed accordingly vide order dated 21.9.2012 (Annexure-R/2 of the Counter). Such contentions in the Counter have neither been contradicted by the applicant in his

pleadings nor the order dated 21.9.2012 rejecting his claim has been challenged by the applicant in this OA.

11. It is further noticed that although the applicant averred in the Rejoinder that the order dated 24.8.2018 (Annexure-A/14 of the OA) has been challenged in the OA, but there is no mention of the said order in the relief sought for in para 8 of the OA. Hence, there is no challenge in the OA to the orders dated 24.8.2018 and 21.9.2012, by which the claim of the applicant for HRA from May, 2011 till July, 2014 was rejected by the respondents and his claim cannot be allowed without quashing of the above orders.
12. Regarding the claim of HRA for the period 1.12.2018 till 29.1.2019, the respondents have averred that the HRA from February, 2019 was allowed based on the date as per accommodation controlling authority's certificate. But in the Counter, no reason has been furnished for non-furnishing of the said certificate from 1.12.2018. It is admitted in the Counter that no quarter was vacant at Balasore for allotment to the applicant. When no quarter was available for allotment to the applicant, there was no justification for disallowing the applicant's claim for HRA w.w.f. 1.12.2018. In addition, no specific order was passed by the competent authority indicating the reason for not allowing the HRA w.e.f. 1.12.2018 while allowing it from 30.1.2019 as averred in para 10 of the Counter.
13. In view of the above discussions, I am of the view that the applicant has failed to make out any case in support of his claim of HRA for the period from May, 2011 till July, 2014, which cannot be allowed. At the same time, the reason furnished by the respondents for disallowing HRA to the applicant w.e.f. 1.12.2018 till January, 2019 during his posting at Balasore is not tenable.
14. Accordingly, the MA No. 416/2019 is allowed and the OA is allowed in part with a direction to the respondents to pay the HRA to the applicant for the months of December, 2018 and January, 2019 after deducting the amount of HRA if already paid to the applicant for the aforesaid period in accordance with the rules, within two months from the date of receipt of a copy of this order. There will be no order as to cost.

(GOKUL CHANDRA PATI)
MEMBER(J)