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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**O.A. NO. 2176/2004
M.A. No. 24/2005**

New Delhi this the 31st day of August, 2005

Hon'ble Mrs. Meera Chhibber, Member (J).

IN THE MATTER OF:

R.S. Misra,
PGT (Chemistry),
K.V. Sainik Vihar,
New Delhi.

..... Applicant.

(By Advocate Shri M.K. Bhardwaj)

Versus

Union of India, through

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area, SJS Marg,
New Delhi-110016.
2. Joint Commissioner (Admn.),
Kendriya Vidyalaya Sangathan,
18, Institutional Area, SJS Marg,
New Delhi-110016.

..... Respondents.

(By Advocate Shri S. Rajappa)

O R D E R (ORAL)

By this O.A. applicant has sought the following relief:

- (i) to quash and set aside the impugned memo dated 12/13.5.2004 with all consequential benefits qua the claims not admitted;
- (ii) to direct the respondents to pay to the applicant HRA at Delhi rate from the date of termination to date of reinstatement;
- (iii) to direct the respondents to pay to the applicant double HRA for the period he remained posted in North East in terms of benefits as extended to the employees of North-East;
- (iv) to direct the respondents to pay to the applicant HRA from Jan, 2001 to August, 2002 in the manner as mentioned in Prayer (ii);



- (v) to direct the respondents to pay to the applicant Transport Allowance at Delhi Rate, CCA and Teaching Allowance from 1.8.1997 to 31.10.2000;
- (vi) to direct the respondents to pay to the applicant TA/DA claim from Rajkot to Delhi due after reinstatement in service;
- (vii) to direct the respondents to pay to the applicant difference of TA/DA claim and medical claims;
- (viii) to direct the respondents to give LTC claim to the applicant for traveling from Imphal to New Palam Vihar, Delhi;
- (ix) to direct the respondents to pay interest @ 12% to the applicant on all arrears paid after a long and deliberate delay;
- (x) to pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case".

2. It is submitted by the applicant that his services were terminated while he was working as PGT (Chemistry) in KV Rajkot, on 11.2.1988. The said order was quashed and set aside by the Hon'ble High Court in Writ Petition No. 3354/89, decided on 19.9.1994 with all consequential benefits.

3. Despite Court's order, though applicant was reinstated but the entire period was treated as 'dies non' from the date of his termination to reinstatement. He, therefore, filed CP, which was disposed of on 23.9.2002 by giving direction to the respondents to consider balance consequential benefits and liberty was given to the applicant to challenge such order in appropriate forum if he is not satisfied. He, therefore, filed OA 339/2004 as he was not paid the transport allowance, HRA, TA/DA on transfer, LTC claim, interim relief, medical claim, etc. The said OA was disposed of vide order dated 10.2.2004 by directing the respondents to consider the representations of the applicant and dispose them of by a reasoned and speaking order. Pursuant to the said directions, respondents passed a detailed order dated 12/13.5.2004 (page 24), which has been challenged in the present O.A.

4. It is stated by the applicant that he was entitled to get HRA/DHRA at Delhi rate during the period of his termination as he stayed at Delhi. Moreover, after he was posted in North East region, he was entitled to get double HRA but the same has not been given to him in spite of his making repeated representations. In the grounds, applicant has stated that he is entitled to get more money than

what has been paid to him and even on the grounds where some of the benefits have been rejected, he is entitled to get the same. 20

5. Respondents, on the other hand, have opposed this O.A. They have stated that multiple reliefs have been sought by the applicant in this O.A. and some of the reliefs sought, do not flow from the consequential benefits and they are fresh cause of action, therefore, in case applicant is aggrieved, he must file separate OA for seeking such reliefs as he cannot club together the reliefs which are not flowing from each other. Counsel for the respondents submitted that after applicant was reinstated in service, pursuant to the judgment given by Hon'ble High Court, he has been paid the amounts, which were found due to him. He further submitted that applicant had also filed OA 2188/2003 challenging the orders dated 10.7.2003 wherein recovery of excess amount was ordered on account of payment of double HRA. After hearing both the counsel, the said OA was decided on 11.5.2004 whereby the orders passed by respondents were quashed and they were restrained from giving effect to the recovery from the applicant in respect of double HRA but it was made clear that this shall not preclude them from recalculating the normal HRA, which is permissible to the applicant keeping in view the basic pay for the period from 1988 to 2000 and in case it is found that applicant has been paid in excess of admissible HRA, they would be at liberty to give effect to the recovery from the applicant after apprising him of the same. Pursuant to this decision, respondents have already passed a detailed order on 1.10.2004 wherein details of the HRA paid to the applicant so far have been reflected in detail and after calculation, it has been shown that an amount of Rs.6077/- has been paid in excess for the period from February, 1988 to December, 2000 and an amount of Rs.18901/- has also been paid to him from January, 2002 to February, 2003, as additional HRA at the rate admissible at Rajkot though he was allotted Govt. Quarter at Imphal from January, 2001, therefore, the total amount of Rs.24978/- paid in excess as HRA/addl. HRA is recoverable from the applicant (Annexure R-1). He thus submitted that in case applicant is aggrieved by the said order, that would be a separate cause of action and he must challenge it by a separate OA.



6. They have also explained that as far as the LTC bill of applicant for Rs.5085/- dated 14.3.2001 and Rs.4698/- dated 25.6.2002 is concerned, it is seen from the records that applicant had visited New Delhi Palam Vihar, which was not his declared home town during that period as he sought for the change of home town to Palam Vihar only on 23.8.2002, that is after availing of the LTC as stated by him. His declared home town is Barabanki. Therefore, he is not entitled for reimbursement of Rs.5085/- towards LTC claim. Moreover, the claim of Rs.4698/- is also not admissible as admissibility of emergency passenger concession (LTC) was not in force during the period as per DOPT O.M. dated 31.3.2001. Similarly, his reimbursement claim for Rs.2264/- for visiting home town during November, 2001 is also not admissible on the same ground. He has already been paid Rs.13190/- towards interim relief arrears through the Principal, K.V. Sainik Vihar for the period 16.9.1993 to 31.12.1996 by DD No. 171108 dated 16.2.2005. He has already been paid Rs.23,360/- towards CCA/SCA arrears vide bill No. 27 dated 17.9.2002 at the rate applicable for the last place of posting for which applicant is entitled to. They have further submitted that all the other claims have been dealt with in the detailed speaking order which may be referred to. They have denied that there is any mala fide intention on the part of the respondents to decide the claims of the applicant. He also relied on the order dated 23.9.2002 passed in CCP No.151/2001 by Hon'ble High Court of Delhi wherein it was specifically recorded that petitioner has already been reinstated in service and a sum of Rs.11,48,625/- has been paid by way of arrears of pay and allowances. The question whether petitioner is entitled to other consequential benefits and if so from which date cannot be granted automatically, therefore, the respondents shall consider the case of petitioner for the grant of such benefits. In case it is found due, the same shall be granted to him. Counsel for the respondents thus submitted that since liberty was given by the Hon'ble High Court only on the question of consequential benefits, applicant cannot include all his claims in one OA when they have to be claimed in separate O.As. He thus prayed that the O.A. may be dismissed.



7. I have heard both the counsel and perused the pleadings as well. Since relief (i) is to quash the impugned order dated 12/13.5.2004 wherein all the claims of applicant have been referred to, this shall be dealt with one by one. After examining all the relief(s) claimed by the applicant step by step, it is seen that relief (ii) and (iv) are with regard to the HRA claimed by the applicant at Delhi rate from the date of termination to the date of reinstatement but admittedly on the date when applicant was terminated in 1988, he was last posted at Rajkot, therefore, there is no justification in the claim made by the applicant that he should be paid HRA at Delhi rate. Therefore, reliefs (ii) and (iv) are rejected.

8. Relief No. (iii) is related to double HRA for the period he remained posted in North-East in terms of the benefits extended to the employees of North East. To substantiate his this claim, applicant has relied on Para 11 of Annexure-1 to the Rejoinder (Page 52) which, for ready reference, reads as under:

"11. Concession regarding grant of House Rent Allowance.

A. Benefit of Double HRA

Sangathan employees posted to the specified States/Union Territories from outside the N-E Region to another State/Union Territory of the N-E Region, and who are keeping their families in rented houses or in their own houses at the last place of posting will be entitled to HRA admissible to them at the old station, and also at the rates admissible at the new place of posting in case they live in hired private accommodation irrespective of whether they have claimed transfer T.A. for family or not subject to the condition that hired private accommodation or owned house at the last station of posting is put to bonafide use of the members of the family. These concessions are admissible also to those posted to Andamn and Nicobar Islands".

9. However, it is seen that the question of double HRA was already subject matter of OA 2188/2003 wherein liberty was given to the respondents to recalculate the normal HRA which is admissible to the applicant keeping in view the basic pay for the period from 1988 to 2000 and pursuant to these directions respondents have already issued a detailed order dated 1.10.2004 (Annexure R-1) wherein respondents have also dealt with the HRA paid to him at the admissible rate at Imphal from 30th October to December, 2000 and for other periods as well. Therefore, if applicant is aggrieved by the said order, he has to challenge the order dated 1.10.2004 in a separate proceeding because so long

as the order dated 1.10.2004 remains and no challenge is made to it, no contrary directions can be given by the Court. Therefore, applicant is given liberty to challenge the said order in accordance with rules, in case, he is aggrieved by it and has been so advised. In view of liberty granted to the applicant, counsel for applicant does not press his M.A.24/2005. The same accordingly stands disposed off.

10. In relief (v), applicant has sought a direction to the respondents to pay him transport allowance at Delhi rate, CCA and teaching allowance from 1.8.1997 to 31.10.2000. I am of the considered view that since applicant was out of service for the period from 1988 till 2000 and he did not perform any duty, he would not be entitled to get any allowance over and above the pay and allowances which would come under the heading of pay. From the order dated 23.9.2002 passed by the Hon'ble High Court, it is seen that Hon'ble High Court has already observed that an amount of Rs.11,48,625/- has been paid by way of arrears of pay and allowances, which was accepted by him. Therefore, it is not open to the applicant now to claim these allowances, that too at Delhi rates when he was not posted at Delhi at the time of his termination. Moreover, applicant has sought teaching allowance not from 1988, that is the date of his termination but only from 1.8.1997 to 31.10.2000, which means he was not being given or entitled to teaching allowance as on the date when he was terminated, therefore, this cannot be covered within the scope of consequential benefits. Therefore, this relief is also rejected.

11. In relief (vi), applicant has sought direction to the respondents to pay to him TA/DA claim from Rajkot to Delhi after reinstatement in service. It is the admitted case that applicant has been paid TA/DA only from Delhi to Imphal whereas as per respondents' own showing last place of posting of applicant was at Rajkot, therefore, this claim of the applicant seems to be justified that he should be given TA/DA from Rajkot to Delhi as well, as he was transferred Rajkot to Imphal after reinstatement, therefore, this relief is allowed, subject to applicant's showing the proof that he had travelled from Rajkot to Delhi after the order of reinstatement was passed.



12. As far as the medical claim is concerned, in the impugned order respondents have stated that he preferred the claim for Rs.1051.58 but admissible amount of Rs. 161/- has already been sent to the Principal, K.V, Sainik Vihar vide DD No. 406992 dated 27.3.2004. In the O.A., applicant has merely stated in the ground (H) that applicant was entitled to medical claim for Rs.1051.58 without giving any details as to how he was entitled for the whole amount. Simply by stating that he was entitled for Rs.1051.58, no adjudication can be made on this point. Therefore, no relief can be granted under the head of medical claim, as asked by the applicant.

13. In relief (viii) applicant has sought direction to the respondents to give LTC claim to him for travelling from Imphal to New Palam Vihar, Delhi. It is seen in the impugned order, his claim has been disallowed, on the ground that in the service book, his declared home town is Barabanki whereas he had visited the place of New Palam Vihar, New Delhi as per the claims made by him and he had sought change in the home town only on 23.8.2002, that is after availing the LTC in November, 2001. However, counsel for the applicant has invited my attention to Para 9 of Annex.1 to the rejoinder (page 52), which, for ready reference, reads as under:

“9. Leave Travel Concession

Sangathan employee who leaves the family behind and does not avail transfer T.A. for the family will have the option to choose.

Either: The existing LTC to Home Town once in a block of two calendar years;

Or: The concession for himself once a year from the station of posting to his Home Town or place where the family is residing, and in addition concession for the family (restricted to the spouse and two dependant children only) also to travel once a year from the place of residence to the employee's station of posting”.

In addition, Sangathan employees and families will be entitled to LTC on two additional occasions during their entire service career as “Emergency Passage Concession” and intended to enable them and families (spouse and two dependent children) to travel to their Home Town or station of posting in an emergency. These additional passages will be admissible by the entitled mode and class of travel as for normal LTC”.

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As per para 9, as referred to above, if Sangathan employee leaves his family behind and does not avail transfer TA for the family, he has the option to choose either the existing LTC to home town once in a block of two calendar years or the concession for himself once a year of station of posting to his home town or place where the family is residing, and in addition concession for the family also to travel once a year from the place of residence to the employee's station of posting. In addition, the employees and families will be entitled to LTC on two additional occasions during their entire service career as "Emergency Passage Concession" in an emergency. There are two conditions which have to be satisfied for attracting the benefit of para 9. First, the employee should have left the family behind and not availed transfer TA for the family. This is a matter of fact which can be ascertained only after specific averment to this effect are made by the applicant. In the instant case, applicant has not stated anywhere that he had not availed transfer TA for the family. On the contrary, in para 4 of the Memorandum dated 12/13.5.2004, it is seen that applicant had claimed TA bill in respect of his son from Delhi to Imphal. However, at this stage, I do not wish to close this aspect of the applicant because neither there is any averment made to this effect nor respondents have given any clear picture on this point. Therefore, this aspect is left open to the applicant so that in case he had left his family behind and had not claimed transfer TA for the family, in that case he may claim the concessions, as mentioned in the aforesaid para 9 provided this para was in existence on the dates when applicant had undertaken the journey for the said LTC purposes. Therefore, applicant may make appropriate detailed application to the respondents in this regard within a period of four weeks from the date of receipt of copy of this order so that it may be considered and appropriate orders may be passed thereon within eight weeks thereafter.


14. No case has been made out for grant of interest as claimed by him, therefore, relief No. (ix) is rejected.

15. As far as para 3 (iv), (vi), (vii), (viii) and (xi) of Memorandum dated 12/13.5.2004 is concerned, no details have been given by the applicant except stating that he is entitled to full amounts. In the absence of specific averment as



to how he is entitled for full amounts, no adjudication can be done by the Court. With regard to para 3 (v) of Memorandum dated 12/13.5.2004, applicant has stated categorically that he has submitted transfer TA claim for transfer from K.V. Silchar to K.V. Sainik Vihar. In case transfer TA claim has been submitted by applicant, the same shall be decided within 8 weeks and payments made thereof without any further delay provided claim is in order.

16. The O.A. is disposed of, in terms of the directions, as given in paras 7 to 15 above. No order as to costs.


31/8/05.
(Mrs. Meera Chhibber)
Member (J)

'SRD'