

Central Administrative Tribunal, Principal Bench

O.A. No.488/2004

New Delhi this the 6 day of September, 2005

Hon'ble Mr. V.K. Majotra, Vice Chairman (A)
Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

1. Bhartiya Postal Employees Union Class-III
Through T.C. Tanwar
Assistant General Secretary,
A-21, Atul Creve Road, New Delhi
Comp. At DLF Gurgaon-122002.
2. Hans Raj Sharma
S/o Shri Parvati Lal
Post Man, Post Office,
DLF Qutab Enclave,
Gurgaon, Haryana.Applicants

By Advocate:Ms. Madhu Tewatia.

Versus

1. The Union of India
Through Secretary cum Deputy General
Ministry of Communications & IT,
Department of Post,
Dak Bhawan,
Sansad Marg,
New Delhi-110 001.
2. The State of Haryana,
Through Secretary,
Ministry of Urban Development,
Chandigarh Secretariat,
Chandigarh.Respondents

By Advocate: Shri K.R. Sachdeva, counsel for respondent No.1.

Shri Hari Kishan Kataria, counsel for respondent No.2.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicants have filed this OA for quashing the order dated 3.1.2003 whereby their representation for grant of CCA and HRA at Delhi Rate was rejected and they were held to be entitled for grant of HRA at 'C' Class city rates, i.e., 7.5% of the basic pay on the basis of the laid down norms. They further pray that the respondents should be directed to grant CCA/HRA to the postal employees at DLF Qutab Enclave Gurgaon, IC Dundahera, Palam Vihar, Badshahpur and Sector 45 Gurgaon Post Offices at Delhi rates.

2. Allegations, in brief, are that the applicant No.1 Bahartiya Postal Employees is an Association of Central Government Postal Employees and the applicant No.2 is the member of the said Association and is working as Postman in the Post Office, DLF Qutab Enclave Gurgaon, State of Haryana. They are claiming CCA/HRA at Class A-I City rates (i.e. Delhi rates) at which rate these allowances are being paid to Central Government servants including Postal Employees posted in Gurgaon Municipal area on the ground that their place of posting is located within 8 Km. of the periphery of Gurgaon Municipal limit. They have referred to the Central Government orders reproduced in FR & SR Part-V in Swamy's Compilation relating to the allowances, fee and honorarium according to which HRA and CCA were admissible to the Central Government employees at Delhi rates in Gurgaon Municipal Corporation area under special orders of the Central Government and the benefits of that order may be made applicable " by specific sanction by the Ministries/Departments to staff working in a number of individual places which are within 8 Km of municipal limits of classified cities but which are included within the UA of any city, subject to fulfillment of certain conditions. One of the condition was that the employee at the place of duty in the proximity of a qualified city and who, of necessity, had to reside within the city. Employees working in aerodromes, metrological observatories, wireless stations and other establishments, even though they may not reside within those municipal limits, may also be extended the benefit "under the special order". They alleged that the Central government employees in Solar Energy Department and Telecommunication Department were paid HRA at 30% despite their offices being located in DLF Qutab Enclave Gurgaon, IC Dundahera, Palam Vihar Badshahpur and Sector 45 Gurgaon. But the Postal Employees working in the Post Offices of the Postal Department located in the above mentioned places are being paid HRA/CCA at Class 'C' City rate. It is further submitted that staff of DLF Sub Post Office was paid HRA at the rate of 30% of their basic pay from February, 1992 to October, 1994 but the same was stopped and excess payment of over 7% was recovered from them without any specific order of the department. They claim that they were entitled to the same since their offices are located within 8 Kms. of periphery of the municipal limit of Gurgaon by virtue of the special order under which the Central Government employees

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working within Gurgaon municipal limits have been granted HRA and CCA at Delhi rates.

3. The respondent in their counter-reply have repudiated the claim of the applicant. They have raised preliminary objection that the OA filed is in the nature of Public Interest Litigation over which the Tribunal has no jurisdiction and further that the Ministry of Finance, Government of India at whose advice, clarification was issued in the order dated 3.1.2003 which is impugned in the OA, was a necessary party, but has not been impleaded as a party. On merit, it was stated that by virtue of the special order of the Government of India, Ministry of Finance vide OM dated 9.12.1986 (Annexure R-I) the benefit of HRA and CCA equivalent to class A-1 City of Delhi has also been extended to the Central Government employees working within the limits of Gurgaon Municipal Corporation. IC Dundahera, Badshahpur, Palam Vihar, DLF Qutab Enclave and Sector 45 Gurgaon are beyond the periphery of Municipality of Gurgaon. Badshahpur and Dundahera were villages and have their own Gram Panchayats. But there is an Industrial Complex adjoining to the area of Dundahera, where a departmental Post Office I.C. Deundahera is functioning. DLF Qutab Enclave and Palam Vihar are at a distance of 8-9 Kms. from Gurgaon Post Office. These areas are known as Sub Urban having residential colonies established around them but are beyond the municipal limits of Gurgaon. It is further submitted that based on census of 1981 and issuance of a dependency certificate by DC Gurgaon, both Dundahera and Badshahpur were sanctioned HRA vide Government of India, Ministry of Finance, OM No. 11023/26/B-II(B) dated 26.12.1989 (Annexure R-II) for a period of 3 years from 1.3.1989 to 29.2.1992. It was specifically mentioned therein that the rate of HRA to both these places would be appropriate to those employees posted within qualified city of Gurgaon, i.e., at 'C' class city. The currency of admissibility of HRA to these places was further extended for the period from 1.3.1992 to 28.2.1995, from 1.3.1995 to 28.2.1998 and from 1.3.1998 to 28.2.2001. Thereafter, no dependency certificate was granted by the DC for extending the grant of HRA, therefore, the HRA at the rates appropriate to unclassified Cities, i.e., at the rate of 5% is being paid in these offices. Similarly DLF Qutab Enclave, Sub Post Office was opened with effect from 25.6.1990 and Palam Vihar S.O. on 8.4.1991 and on the basis of the dependency certificate issued by DC Gurgaon, HRA

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at the rates appropriate to those posted within qualified city of Gurgaon, i.e., at C-Class City were sanctioned to the Central Government servants posted in these offices vide letter dated 26.8.1992 (Annexure R-V) from 1.2.1992 to 31.1.1995, from 1.2.1995 to 31.1.1998 and from 1.2.1998 to 31.1.2001. Thereafter, no further dependency certificate has been granted by the DC in respect of these stations and HRA at the rate appropriate to unclassified city at 5% are being paid to the employees posted in these offices. It is further stated that no dependency certificate in respect of Sector 45 Gurgaon has, in fact, been issued by the DC, Gurgaon and HRA at the rates appropriate to a unclassified city is being paid to the employees there as it is also in a rural area beyond the municipal limits of Gurgaon. The representation made by the employees working in the aforementioned areas was duly considered and it was clarified that these allowances at C-Class City rates, i.e., 7.5% of the basic pay were only admissible to the employees.

4. The respondents have admitted that the employees of the Telephone Exchange and some other Central Government offices such as Solar Energy and Income Tax Department located at DLF Qutab Enclave are being paid HRA at enhanced rates of 30% but it is submitted that the orders under which it was sanctioned is not available with them that is why the nodal Ministry had sought clarification from Telecom Authority. Other allegations have also been controverted.

5. The applicants in rejoinder have reiterated their own case and have justified their claim.

6. We have heard the learned counsel for the parties and have carefully considered the relevant documents filed by them.

7. As regards the preliminary objection that the OA is in the nature of Public Interest Litigation, suffice to mention that the present OA is filed for redressal of the grievance of the Central Government Postal Employees posted in the offices which are situated in DLF Qutab Enclave, IC Dundahera, Badshahpur, Palam Vihar and Sector 45 Gurgaon Post Offices. By no stretch reasoning the OA could be said to be in the nature of Public Interest Litigation when the relief is claimed by an Association whose members, including the applicant No.2 are affected by orders of the respondents. Applicant No.1 Bhartiya Postal Employees Class-III is the Association of the Postal Employees and has filed the OA in a representative capacity on behalf of its members, who are posted in the

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above mentioned places. Applicant No.2, Hans Raj Sharma, is a Postman, who is posted at Post Office DLF Qutab Enclave, therefore, he is the affected person. Clause (b) of sub-rule (v) of Rule 4 of Central Administrative Tribunal (Procedure) Rules, 1987 has provided as under:-

“(b) Such permission may also be granted to an Association representing the persons desirous of joining in a single application provided, however, that the application shall disclose the class/grade/categories or persons on whose behalf it has been filed {provided that at least one affected person joins such an application}”.

8. The requirements of this sub-clause have been satisfied in the present OA. The OA is filed for the redressal of the grievances of the members of the applicant No.1 Association, who are posted in the offices at the places specified in the OA and who are aggrieved by the order of the respondents authorities dated 23.1.2003, Annexure P-I. The applicant No.2 is the affected person who has joined this OA. The class, grade and the categories of the persons on whose behalf it has been filed has also been stated. All the requirement of this clause stands fulfilled. The OA, as such cannot be said to be in the nature of the Public Interest Litigation which this Tribunal has no jurisdiction to admit.

9. As regards the second preliminary objection that Ministry of Finance on whose advice clarification dated 3.1.2003, Annexure P-I was issued was a necessary party, suffice to say that the Union of India has already been arrayed as respondent No.1 in the present proceeding and the Finance Ministry is its constituent. The nodal Ministry of the Postal Department is party to the OA. Finance Ministry does not become a necessary party merely because it has given certain clarifications, which were sought for by the nodal ministry. A person can be impleaded in a suit or an application when he ought to have been joined but has not been so joined, i.e., in his absence the question in controversy cannot be completely or effectively adjudicated. The question in controversy in the present OA can be decided even in the absence of the Ministry of Finance of the Government of India so the OA is not bad for the non-joinder of the Ministry of Finance.

10. Coming to the merit of the case, it is pertinent to note that as per the applicants own case Gurgaon city was classified as 'C' Class City where the HRA at the rate of 7.5% of the basic pay was admissible and the CCA was also payable at 'C' class city rates. It is only by a special order of the Government of India that the Central Government employees, who are posted within the limits of Gurgaon Municipal

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Corporation, have been granted HRA and CCA admissible at Delhi rates. The applicant had filed extract of the Swamy's Compilation and is at page 8 of the OA. There is a list of Cities where HRA and CCA was made admissible at Class A-1 City rate (i.e. Delhi rates) under the special orders of the Government. It included Gurgaon Municipal Corporation area. The HRA/CCA rates applicable to the classified cities and stations covered by special orders may also be made applicable by specific sanction of the Ministry/Department to the staff working in a number of individual places which are within 8 Kms. of municipal limits of classified cities but which are included in the UA of the city, subject to fulfillment of certain conditions, i.e., employees whose place of duty is in the proximity of a classified city and who, of necessity, have to reside within the city or the employees working in aerodromes, meteorological observatories, wireless stations and other establishments, even though they may not reside within those municipal limits. The Government of India, Ministry of Finance OM dated 14.9.1993 is at page 30 of the OA which related to the reclassification of the cities and towns with effect from 1.3.1991 based on 1991 Census. As per this OM HRA/CCA at Delhi rates were made admissible to the Central Government servants in Gurgaon vide OM dated 9.12.1986 not on the basis of the classification of cities and towns as per criteria but 'By special reasons' and were continued to be applicable till further orders.

11. A careful scrutiny of the documents which have been placed on record would show that HRA/CCA was granted at Delhi rates to the Central Government employees working within the municipal limits of Gurgaon by special orders. If the rates which are admissible to the central Government employees posted within the municipal area of Gurgaon were to be extended to the Central government servants who were working within 8 Km. of the periphery of municipal limits it could be done only by the Central Government by a specific order. Specifying the rates at which the CCA/HRA is admissible to the Government servant in a particular city or area is a matter of policy of the Central Government in which the Tribunal cannot interfere unless the policy is shown to be mala fide, in contravention of any statutory or constitutional provision. Grant of HRA and CCA at a specified rate and at specified place lies within the domain of the State policy. No mala fide is imputed. No contravention of statutory provisions or rules or constitutional provision is proved. The Tribunal is unable to interfere with the State

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policy in exercise of its power of judicial review. The Tribunal reviews only the manner in which the decision is arrived at and does not review the decision itself.

12. However, during the course of arguments, the learned counsel for the applicants has drawn our attention to a letter of the Ministry of Communication and IT Department of posts of the Government of India dated 28.6.2002 (Annexure P-4) whereby continuation of the grant of HRA its staff working at I.C. Dundahera, Badshahapur, Palam Vihar, DLF Qutab Enclave and Sector 45 Gurgaon Post Offices in Haryana Circle at Delhi rate was continued subject to fulfillment of the conditions laid down in OM dated 27.11.1965.

13. The respondents have admitted that employees of Telephone Exchange and some other Central Government Offices such as Income Tax and Solar Energy Department posted at DLF Qutab Enclave are being paid HRA at enhanced rate of 30% of the basic pay but it is stated that the orders under which this has been sanctioned are not available with the respondents and the nodal ministry has sought clarification from Telecom Authorities in this regard. In the impugned order dated 3.1.2003 Annexure P-1 also a similar averment has been made. As a model employer there should not have been any discrimination in the allowances like HRA/CCA admissible at two different rates in two different ministries/departments of the same Government. The Government should have examined all those cases where the HRA at enhanced rate was being paid to the Central Government employees at DLF Qutab Enclave etc. and should have taken a conscious decision on the representation of the respondent thereafter to remove the discrimination between similarly situated persons. The grievance of the applicant to that extent seems justified but we are unable to grant the relief to the applicants since it is a policy matter of the Government.

14. Having regard to the above discussion, we do not find any merit in the present OA it is dismissed. But we do hope that the respondent No.1 shall take a decision in the matter afresh after getting clarification from the Telecom, Income-Tax and Solar Energy Departments. Parties are left to bear their own costs.

M.A. Khan
(M.A. Khan)
Vice Chairman (J)

Rakesh

V.K. Majotra
(V.K. Majotra)
Vice Chairman (A)