

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A. No.060/00504/2019



Chandigarh, this the 15th of April 2021

(Order reserved on 31.03.2021)

HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)

MES No. 203867 Murli Manohar, Aged 60 years (Retd. Suptt. Engineer) son of Sh. Munshi Ram, R/o H. No. 07, Green Garden Avenue, Tara Health Club Street, Near Baba Makhan Shah Lubhana Nagar, Post Office Model Town, Jalandhar – 144003 (Punjab)

....Applicant

(BY: Mr. Shailendra Sharma, Advocate)

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, Army HQ, New Delhi – 110001.
2. The Engineer-in-Chief (Army) Army HQ, Kashmir House, Rajaji Marg, New Delhi – 110001.
3. The Chief Engineer, Central Command, Military Engineering Services, Lucknow (UP) – 226002.
4. The Chief Engineer (Air Force), Military Engineering Services, Air Force Station, Bamrauli, Allahabad (UP) – 211012.
5. Principal Controller of Defence Accounts (Central Command), Cariappa Road, Cantt, Lucknow (UP) 226002.
6. Area Accounts Officer (Central Command), I Ashoka Marg, Allahabad (UP) – 211001.

... .Respondents

(BY: Mr. Sanjay Goyal, Advocate)

ORDER**AJANTA DAYALAN, MEMBER (A):**

1. The present O.A. has been filed by the applicant Murli Manohar seeking quashing of order dated 11.04.2019 (Annexure A-5) and letter dated 30.04.2019 (Annexure A-6) ordering recovery of Rs.4,06,816 on account of alleged payment of HRA for the period from 01.10.2017 to 31.10.2018.
2. The applicant was appointed as Assistant Executive Engineer in 1986. He was further promoted and finally retired as Superintendent Engineer on 31.10.2018. He was transferred to Allahabad on 11.10.2017. He was at that time entitled for Type-6 Married Accommodation. The applicant has pleaded that as this was not available at Allahabad, he lived in a single room accommodation for officers in Officers Mess Complex of HQ CE (AF) Allahabad. Here, he continued to stay till his retirement in October 2018 and was paying room rent of Rs.400/- daily. Simultaneously, he drew HRA of approximately Rs.30,000/- per month. The applicant has pleaded that he paid income tax on this amount as the same was included in his income every year. After retirement, No Demand Certificate was issued to the applicant on 10.01.2019 (Annexure A-3) and the entire retiral benefits were released to him.



3. On 21.02.2019, Respondent No. 6 wrote a letter to Respondent No. 4 highlighting the discrepancy in granting the HRA to the officers staying in the accommodation in Officers Mess. In response, Respondent No. 4 vide letter dated 05.04.2019 (Annexure A-4) pointed out that the guest rooms of Officers Mess are not proper and adequate accommodation and are merely a single room with attached toilet. It was further pointed out that these guest rooms are allotted to officers on temporary basis and officers vacate the same when they proceed on leave or on holidays. Besides, Officers Mess charges rent on daily basis and hence their stay is not free and as such HRA was admissible. The applicant further pleads that Respondent No. 6 vide letter dated 11.4.2019 (Annexure A-5) gave reference to order dated 26.11.1985 wherein it was stated that it is immaterial whether the officers mess accommodation is proper or not and is a paid accommodation. The officers staying in Officers Mess are still not entitled for HRA. As such, vide this letter, recovery of over payment from all the concerned persons staying in Officers Mess accommodation was ordered.

4. In view of the order dated 11.04.2019, Respondent No. 4 vide letter dated 30.04.2019 (Annexure A-6) ordered recovery of HRA paid to the applicant for the period from 01.10.2017 to 31.10.2018. The applicant was directed to deposit the said amount.



5. The applicant has further pleaded that in identical circumstances, another employee was allotted accommodation; but he surrendered the same and shifted to temporary room in MES Officers Club and started drawing HRA. Recovery of HRA was sought in that case. However, Bangalore Bench of this Tribunal while deciding the O.A. No. 211/1998 titled **A.S. Pillai Vs. Union of India and Others** in its judgment dated 01.12.1998 (Annexure A-7) quashed the order of recovery after relying upon the judgment of **Dr. S.K. Ghosh Vs. Union of India & Others** (1991) 16 ATC 22. It was concluded therein that even when a government employee stays in guest house and even when such stay is much longer than admissible, he is entitled for HRA and the same cannot be denied to him. In the writ petition filed by Union of India in this case, the Hon'ble Supreme Court vide its judgment dated 25.10.2004 (Annexure A-8), reported as AIR 1984 SC 2541 titled **Director, Central Plantation Crops Research Institute Ksesargod & Others Vs. M. Purushothaman and Others**, dismissed the writ petition.

6. The applicant has finally concluded that he is entitled for HRA during the period he stayed in the Officers Mess accommodation as this accommodation was not proper and adequate and was a paid accommodation. Besides, he was not allotted accommodation as per his entitlement. The O.A., therefore, deserves to be allowed.



7. The respondents have contested the claim of the applicant. They have not contested the basic facts of the case, as brought out by the applicant. However, they have brought out that the orders dated 11.04.2019 and 30.04.2019 were issued by the respondents for recovery of HRA. In these orders, they have relied upon the instructions dated 26.11.1985 issued by the Govt. of India, Ministry of Communication in consultation with the Ministry of Finance. This fact was also mentioned in respondent department letter dated 11.04.2019 as well as dated 05.01.2017. They have also stated that the contention of the applicant that he was forced to stay in Officers Mess on payment of mess charges has no relation to payment of HRA. In fact, the applicant never applied for the allotment of available Type-V Govt. Married Accommodation after joining at Allahabad on his transfer from Jalandhar Zone. They have also brought out that the applicant is widower and both his children are more than 25 years age and are not staying with him. No other member of the family is dependent on the applicant as per the records available with the respondent department. As such, the applicant in his own interest did not apply for Govt. Married Accommodation and enjoyed the facility of Guest Room accommodation for his full tenure while he was posted at Allahabad. He stayed in guest house at his own will and



did not take a house outside on rent. The guest room was allotted to him on his own request.

8. The respondents have also stated that the applicant enjoyed the facility of guest room by paying Rs.86400/- for his entire stay period while he drew benefit of Rs.4,06,816 by way of HRA. Even after calculating the tax of Rs.1,26,460/- paid by him towards income tax, he took financial benefits of around Rs. 2 lakhs intentionally.

9. The respondents have further stated that the applicant being a Director level Class- I officer having more than 35 years of service, was well aware of the amount being granted to him as HRA and the actual expenditure being incurred by him. Further, as an officer, he is supposed to be aware of the rules and he is responsible for all his actions. He has to ensure that he maintains impeccable integrity and none of his actions intentionally should result in loss to the State.

10. The respondents have also contested the claim of the applicant that Type-6 Married Accommodation was not allotted to him as it was not available. They have stated that he never applied for Married accommodation during his entire service at Allahabad, which he was supposed to do as per the rules. Thus, to say that he was forced to stay in guest house is improper.



11. The respondents have further stated that the issue of excess payment of HRA was not raised at the time of grant of No Demand Certificate to him as this issue had not cropped up at that time. It was only later that this issue cropped up and immediate action was taken to recover the HRA. The department has also relied upon order dated 01.02.2019 (Annexure R-1) issued by Ministry of Finance which regulates the grant of HRA and reimbursement of rent to government servants during their temporary stay in State Bhavans/ Guest Houses. As per this order, rent paid for guest house can be reimbursed to the government servant if he temporarily stays in State Bhavan or Guest House subject to certain conditions. These conditions include that the official should have applied for accommodation of his entitlement but has not been allotted the same. Also, the reimbursement or rent is admissible only up to a maximum period of six months. However, no HRA is admissible during this period.

12. Moreover, the respondents have relied upon order dated 05.01.2017 (Annexure R-2) issued by the Controller General of Defence Accounts whereby those occupying the Government accommodation are not eligible for HRA. It is also clearly stated therein that the officers staying in the Inspection Quarters/Bungalows etc. in the Headquarters of their posting will not be entitled to draw HRA for the period during which they stay in Inspection Quarters/Bungalows etc.



13. Thus, the respondents have concluded that the instructions on the issue are clear and as per these instructions, the applicant is not entitled of HRA during the period of his stay in Officers Mess Accommodation. They have, therefore, finally concluded that the applicant has no case and the O.A. deserves to be dismissed.
14. I have heard the learned counsel for both the parties and have gone through the pleadings of the case. I have given my thoughtful consideration to the matter.
15. I find that the facts of the case are not disputed. The applicant, who is a Group- A officer, stayed in Officers Mess Accommodation after his transfer to Allahabad in October 2017 till his retirement on 31.10.2018. He paid Rs. 400/- per day towards room rent and drew HRA simultaneously.
16. The case of the applicant is that he was not allotted the Married Accommodation that he was entitled to and hence he was forced to live in single room accommodation of Officers Mess. The accommodation was not proper and he paid Rs.400/- daily room rent. He even paid income tax on the HRA drawn by him. As such, he should be given HRA for the period of his stay from 01.10.2017 to 31.10.2018.
17. The respondents have contested the same and have stated that the applicant never applied for accommodation at Allahabad which is the first pre-requisite for the grant of HRA.



Hence, it was that the officer stayed in guest house at his own will and not that he was forced to stay there. He is a widower with no other family member staying with him and as such, he may have found it more convenient to stay in a guest house than to take a separate accommodation. Besides, the respondents have relied upon the Government instructions which regulate this issue and according to these instructions, the applicant is not entitled to HRA while staying in the Officers Mess Accommodation. They have also stated that the applicant being a Group- A officer, should be aware of the rule position and should maintain impeccable integrity and should not make an effort to draw financial benefit by drawing HRA while staying in government accommodation.

18. I find that it is true that during the whole period of his stay at Allahabad, the applicant by his own submissions stayed in single room accommodation in Officers Mess. It is also not disputed by the applicant that he never applied for accommodation at Allahabad. In the absence of any application from the applicant for allotment of quarter to him at Allahabad – which is the first pre-requisite for the grant of HRA, the applicant's plea that he was forced to stay in Guest House is not proved at all. Rather, it is proved that his stay in Guest House was at his own will.



19. Besides, I find that the instructions dated 01.02.2019, annexed by the respondents as Annexure R-1, are quite clear. These allow reimbursement of rent to government servants only during their temporary stay in the guest houses etc. Further, even this reimbursement is admissible up to a maximum period of six months only. In case of the applicant, the stay is more than one year. Hence, ordinarily he is not expected to stay in a Guest House or Transit Accommodation for that long a period. Even up to six months stay and for reimbursement of rent paid for this period, the condition to be fulfilled is that the officer should have applied for accommodation of his entitlement but the same should not have been allotted to him. Besides, it is clearly stated that no HRA is admissible during the period of such stay in the guest house. Hence, these instructions are crystal clear and do not entitle the applicant to HRA. These instructions are not under challenge in the O.A.

20. Another instructions dated 05.01.2017 are also clear and state as follows:-

"Subject: Admissibility of HRA in case of Govt. Guest House/Transit Facility

Reference: HQrs Office Important Circulars No. AN/XVIII/I/1800/GH dated 21.11.2000 and AN/XIV/14153/III/HRA/CCA/Vol-X dated 18.03.2011.

- 1. Comprehensive guidelines have been issued on the subject vide HQrs Office Important Circular dated 21.11.2000, to regulate the stay of officials at Guest Houses/transit accommodations. Further, HQrs Office Circular dated 18.03.2011 clearly stipulates that those*



occupying Government accommodation are not eligible for HRA and that the officers staying in the Inspection Quarters/Bungalow etc. in the Headquarters of their posting will not be entitled to draw HRA for the period during which they stay in the Inspection Quarter/Bungalow etc.

2. Despite this, HQrs office is in receipt of reference from PCDA/CDA asking for clarification on the subject matter.
3. It is, therefore, reiterated that those residing in Government accommodation be it Inspection Quarter or Transit Facility or Guest House shall not be granted HRA as stipulated vide GOI, Ministry of Communications, in consultation with Ministry of Finance, vide their letter No. 14-4/85-NB dated 26.11.1985. Action may be taken accordingly.

Sd/-

(Mustaq Ashrad)

Dy, CGDA (Admin)"

It is, thus, clear that as per these instructions, the officers occupying government accommodation are not eligible for HRA during the period of their stay in Inspection Quarter/Bungalow etc. Again, these instructions are not under challenge in the O.A. Therefore, in view of these clear instructions, the applicant is not entitled to HRA for the period of his stay in guest house.

21. In view of the above, I find that the applicant is not entitled for the relevant claim in the O.A. The O.A. is, accordingly, dismissed. There shall be no order as to costs.

**(AJANTA DAYALAN)
MEMBER (A)**

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