

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00383/2018

Date of Order: This, the 19th Day of February, 2021

THE HON'BLE SMT. MANJULA DAS, MEMBER (J)

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)



Dr. Jogendra Nath Bora
 Son of Late Nityananda Bora
 Resident of House No.1, Ward No.16
 Near Don Bosco School, Sonaighuli
 P.O.Sawkuchi, Guwahati-781040
 District-Kamrup(Assam).

... Applicant

- Versus -

1. The Controller of Accounts
 Principal Account office
 16-A Akbar Road Hatments Annexe
 New Delhi-110011.
2. Secretary
 Poultry & Fisheries
 Govt. of India
 Department of Animal Husbandry & Farmers' Welfare
 Dairying & Fisheries, Ministry of Agriculture
 Krishi Bhawan, New Delhi-110114.
3. Director Incharge
 Central Poultry Development Organization
 Western Region, Aarey Milk Colony
 Goregaon (East) Mumbai – 400065.

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4. Director Incharge
 Central Poultry performance
 Testing Centre, Begumpur Khatola
 P.O.Narsinghpur, Gurgaon-122001

5. Pay & Accounts officer
 Ministry of Agriculture
 Department of Animal Husbandry
 Dairying & Fisheries
 Exchange Building
 Ground Floor, Sprott Road,
 Ballard Estate, Mumbai-400001.

...Respondents.



For the Applicant : Sri A. Dasgupta, Sr. Counsel
 Sri B. Das & Ms. B. Das

For the Respondents : Sri S.K. Ghosh, Addl. CGSC

O R D E R (ORAL)

NEKKHOMANG NEIHSIAL, MEMBER (A):-

This is 3rd round of litigation. In this O.A., applicant is asking for the following reliefs:-

“8. This Hon’ble Tribunal may pleased to direct the respondent authority to refund an amount of Rs. 4,94,591/- to the applicant which has been deducted by the respondent from the payable gratuity amount of Rs. 8,15,422.00.”

2. In the first O.A. No. 040/00348/2015, this Tribunal vide order dated 18.11.2015 directed the respondents as under:-

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“5. In view of the submissions made by the learned counsel for the applicant, pleading in the O.A. and the supporting documents made available to the Court, this Court has come to the conclusion that at this stage, in the interest of justice, it will suffice that the respondents, specifically, Respondent No. 1 be directed to ensure that the representation made by the applicant to the Joint Secretary, Govt. of India, Ministry of Agriculture on 17.04.2014 is disposed of as per rules, after giving a personal hearing to the applicant.”

3. The aforesaid direction passed in the O.A. was complied with by the respondent authorities by giving personal hearing and disposing of his representation dated 17.04.2014 wherein it has been stated that recovery was based on audit objection, it was for the Principal Accounts Officer, Department of Agriculture to pass an order considering the representation of the applicant. Subsequently the said Principal Accounts Officer by his order bearing No. AGRI/IA/DLI/CPPTC, Gurgaon/48/2014-2014-15/698-99 dated 26.10.2016 disposed of the representation of the applicant. Since the order was found not speaking, said respondent was directed to pass a speaking and detailed order vide



order dated 21.02.2018 in the second O.A. No. 040/00007/2017.

4. Facts of the present case was that – the applicant on promotion was temporarily transferred from Director, Central Poultry Development Organization Chandigarh to Random Sample Poultry Performance and Testing Centre, Gurgaon by utilizing the post of Director, Central Poultry Development Organisation, Bangalore vide order dated 10.10.2007. Subsequently, he was transferred from Gurgaon to Central Poultry Organisation (Western Region), Mumbai vide order under No. 26-1/2007-Admn.III(P) dated 13.05.2009. During the period of his posting in Gurgaon, he had availed/drawn certain allowances as per orders/entitlements as claimed by him. However, after he has been shifted from Gurgaon to Mumbai as indicated above, the Internal Audit Authority i.e. office of the Controller of Accounts objected to certain allowances/benefits drawn by him and accordingly, total amount of Rs. 8,15,422/- was deducted from his



gratuity on his retirement. Being aggrieved with the above action on the part of the respondent authorities, he has approached this Tribunal in this third round of litigation, as indicated above.

5. We have heard Sri A. Dasgupta, Sr. Advocate assisted by Ms. B. Das, learned counsel for the applicant and Sri S.K. Ghosh, learned Addl. CGSC for the respondents. The respondent authorities submitted their written statement on 04.09.2019. They have basically repeated whatever has been indicated in the speaking order of the respondent No. 1 i.e. Controller of Accounts. During hearing, learned Sr. Advocate for the applicant Sri A. Dasgupta submitted that he has no other claims against recovery made from applicant's gratuity except on account of HRA amount drawn by him from 16.10.2007 to May 2009 and also Transport Allowance from 16.10.2007 to August 2008 during his posting at Gurgaon. He also submitted written argument on this line.



6. We have examined these two items particularly. It is observed from the speaking order of the Controller of Accounts No. Pr.Ao/Agri/Admn/MCM/2018-19/2624-28 dated 14.03.2019, who have raised audit objection, has stated as under:-

"If Dr. J.N. Bora, Director would have stayed in Govt. Accommodation, then the amount of Rs. 2,47,011/- paid to Dr. J.N. Bora, on account of HRA/Transport Allowance would have been saved. Thus the above payment made to Dr. J.N. Bora may be treated as irregular and needs to be regularised by the competent authority."



(emphasis supplied)

7. There are certain clear orders of entitlement in regard to officials who are on temporary transfers or permanent transfers. If the period of temporary transfer or temporary duty exceeds more than 180 days i.e. six months, the entire period or beyond 180 days has to be treated on permanent duty. Accordingly, a Govt. employee is entitled to draw whatever allowances he is entitled on permanent transfer. As such, the applicant would have been entitled for composite transfer grant from Chandigarh to Gurgaon (after adjusting advance

of TA/DA if any, drawn by him) Pay and allowances including HRA and Transport Allowance as admissible to him if he does stay in the Govt. Accommodation or not available to him. The applicant claims that the Accommodation that was available was only Type-IV, below his entitlement and also was in dilapidated condition, not fit for living/occupation. Accordingly, he had drawn HRA and Transport Allowance as admissible.



8. From the speaking order No. Pr.Ao/Agri/Admn/MCM/2018-19/2624-28 dated 14.03.2019, it is seen that this drawal of two allowances i.e. HRA and Transport Allowance would have been saved if the applicant had stayed in the Govt. Accommodation. It is however not fair on the part of the respondent authorities to deny this HRA and Transport Allowance. Only on the ground that the Govt. could have saved some money if the applicant had stayed in the Govt. Accommodation. The applicant was entitled to stay in his entitled type V of accommodation and that too in the context of the available Type IV was

not fit for occupation and living. If the entitled Type V was not available, the applicant was entitled to making his own arrangement, pay rent and draw HRA and of course, claim Transport Allowance as per orders and his entitlement.



9. Keeping in view of the above, we found that the applicant cannot suffer due to this observation of Internal Audit Authorities and since there is no dispute of the rate or amount of HRA/Transport Allowance already drawn and spent by the applicant, this amount of Rs. 2,47,011/- may be refunded to the applicant within a period of one months from the date of receipt of this order.

10. No order as to costs.

(NEKKHOMANG NEHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

PB

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