

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

ORIGINAL APPLICATION NO. 112 OF 2002.

ALLAHABAD THIS THE 20th DAY OF August 2007.

Hon'ble Mr. Justice Khem Karan, V.C.

Brijbasi Lal Pathak, son of Shri Sidharath Pathak, R/o 74/4, M.R.T.C. Line, New Cantt. Allahabad, presently is working as CVB (Chowkidar Vacate Building) in G.E. (West) MES New Cantt. Allahabad.

.....Applicant

(By Advocate: Shri R.C. Pathak)
Versus.

1. Union of India through the Secretary Ministry of Defence, Govt. of India, South Block, D.H.Q P.O New Delhi 110 011.
2. The Garrison Engineer (West) MES New Cantt. Allahabad.
3. The B.S.O. (West) C/o GE (West) New Cantt. Allahabad.

.....Respondents

(By Advocate: Shri R.K. Tiwari)

ORDER

It is prayed for following relief(s):-

- (a) *Issue suitable order or direction by way of certiorari quashing the order dated 20.12.2001 issued by the respondent No.3 illegally, unlawfully and arbitrary, and also direct the respondents NO.2 and 3 to make the payment of H.R.A w.e.f January, 1994 to October 1999 which was illegally, unlawfully deducted from the pay and allowances of the applicant w.e.f. January 1994 to October 1999 with 18% penal interest.*
- (b) *Issue suitable order or direction by the Hon'ble Tribunal as deem fit and proper in the circumstances of the applicant case.*
- (c) *to award the cost of the application to the applicant".*


2. Applicant was Chawkidar of vacant Buildings, situating in M.R.T.C Line, Allahabad from January 1994 to 17.11.1999. He alongwith his family lived in Govt. Quarter No.76/2, in his charge as Chawkidar. There ^{were} ~~was~~ no formal orders of allotment of the said quarter. He was allotted quarter No. 75/4, which he occupied on 18.11.1999. He is paying house rent of quarter No. 75/4, since October 1999. It appears from averments made in O.A. and rejoinder, that the respondents started recovering house rent, for occupying quarter No.76/2. The applicant says, no such house rent can be recovered from him, for living in Govt. quarter No.76/2, as the same was never allotted to him and he lived there as Chowkidar. According to him, he was entitled to House Rent Allowance (HRA) during the period, he lived in quarter No.76/2.

3. Pleadings placed on record by the parties, were of no help, as two things namely HRA and House rent were mixed with each other. While House Rent Allowance, ^{is} paid to the Govt. employee on certain conditions and house rent is paid by employee for occupying Govt. accommodations. I refrain from, referring to the relevant paras of pleadings, so as to say, that the same were drafted without understanding the fundamental difference between the two.

4. I, therefore, passed one order on 4.8.2004, eliciting information/clarification on the following points:


- (a) *Whether he was paid any House Rent Allowance (not House rent) for the period from January 1994 to October 1999, if so at what rate.*
- (b) *Whether they are recovering back now the same House Rent Allowance, from the pay of the applicant, if so on what grounds.*
- (c) *Whether any house rent was recovered from the pay of applicant during January 1994 to October 1999, if so at what rate, and on what basis, when the same was not formally allotted to him.*
- (d) *Whether the recovery of House rent is being now made after October 1999, for the above-mentioned period, for occupying quarter No. 76/2.*

5. In compliance of the said order dated 4.8.2006, the respondents filed supplementary affidavit and according to it, the position is as under:-

- (a) *The applicant was not paid House Rent Allowance for the period from November 1994 (not January 1994) to October 1999 due to the reason that he occupied Govt. accommodation in that period.*
 - (b) *House Rent Allowance was not recovered from the applicant for back period.*
 - (c) *Rent and allied charges were not being recovered from the pay and allowances of the applicant w.e.f November 1994 to October 1999 in respect of Quarter No. 76/2.*
 - (d) *Recovery of House Rent is being made from October 1999 for occupying Quarter No. 75/4 and not for occupying Quarter No. 76/2.*
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6. Shri R.C. Pathak appearing for the applicant has not disputed this information as placed by way of supplementary affidavit, in compliance of Tribunal's order dated 4.8.2006. In other words, this much is clear that House Rent Allowance was not paid to the applicant for the period, he occupied Quarter No. 76/2. What Shri R.C. Pathak says is that applicant is entitled to House Rent Allowance as he was not allotted Govt. accommodation. I think claim of the applicant for House Rent Allowance during the period he was in occupation of Quarter No.76/2 at M.R.T.C. line is not supported by the relevant Govt. orders. Shri Pathak has not been able to show any Govt. order or Rule that entitles a Government servant to House Rent Allowance, during the period, he is in occupation of Govt. accommodation or Govt. building whether allotted or not allotted. Government of India's letter No. MUD DIR of OM No.2035 (9)/86-POL (ii) dated 20.10.1987 says that House Rent Allowance will not be admissible to those who occupy accommodation provided by the Government. In the case of the applicant, it can be said that as a Chawkidar, he was allowed to live in Quarter No.76/2, so claim for the House Rent Allowance in question does not appear to be well-founded. According to the respondents, no House Rent Allowance was paid to the applicant during the period in question.

7. Now the next question as to whether the respondents can charge House Rent from the applicant for occupying or for living in Quarter No.76/2. The respondents have tried to say in para 3 (iii) of the supplementary reply filed in July 2007 that recovery of House Rent will be decided after the Court case. In other words, they want to say that they may recover House rent for occupying Quarter No.76/2, M.R.T.C line for the period from November 1994 to October 1999. Shri R.C. Pathak has contended that in absence of any formal allotment of that quarter in favour of the applicant and in view of the fact that he being Chawkidar of vacant buildings, had to remain there for all 24 hours, no such rent can be recovered from the applicant. Shri R.C Pathak says that applicant is already paying House rent for occupying Quarter No.75/4 as it was allotted to to him in October 1999. In the circumstances, I find sufficient force in the submission of Shri R.C. Pathak. Applicant was Chaukidar of vacant building and if he resided in one of the quarters in his charge, without there being any formal allotment of Quarter in his favour, the question of charging house rent ⁴allowance for such accommodation should not arise. It is never the case of the applicant that applicant was not required to live in the area of which he was Chawkidar. Such Chawkidars normally occupy a vacant portion of the building in their



charge and it would be unreasonable to saddle him with the liability of payment of House Rent etc.

8. In fact the matter was very simple and should not have come to the Court. Authorities ought to have settled it in amicable manner. When the case came to the Court, a lot of confusion was created by mixing House Rent Allowance with House Rent. Had it not been done, matter could have been decided about a year back.

9. So my conclusion is that the applicant is not entitled to claim House Rent Allowance for the period, he occupied Govt. Quarter NO.76/2, nor the respondents are entitled to recover any house rent from him for occupying the same during the said period, as applicant's occupation was without any formal allotment and moreover exigency of his duties required him to live there as Chaukidar.

10. The respondents have said that applicant was not paid any House Rent Allowance so the question of recovering the same from the pay of the applicant does not arise. The respondents have also stated in supplementary reply filed in July 2007 that House Rent for occupying of Quarter No.76/2 is not being recovered but it may be decided after the Courts case.

11. In view of what I have said above, the respondents are directed not to recover any House rent from the applicant, for occupying Quarter No.76/2 for the period in question and in case any such rent has been recovered from his salary, the same shall be paid back to him or adjusted against payment of rent of Quarter No.75/4.

12. The Original Application stands disposed of accordingly with the above direction.

No order as to costs.

Manish
20.8.2007

Vice-Chairman

Manish/-