

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.564 OF 2011

Cuttack this the 20th day of August, 2013

CORAM

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Sri Chakradhar Dash

Aged about 59 years

Resident of Vill-Bhatia,

PO-Jajpur Road

Dist-Jajpur – 755 019

Presently working as SPM of Barundei S.O. in account with
Jajpur Head Post Office

...Applicant

By the Advocate(s)-Mr.P.K.Padhi

-VERSUS-

Union of India represented through

1. The Director General of Posts,
Dak Bhawan,
Sansad Marg
New Delhi-110 001
2. Chief Post Master General,
Orissa Circle
At/PO-Bhubaneswar
Dist-Khurda-751 001
3. Superintendent of Post Offices
Cuttack North Division
At-P.K.Parija Marg
PO-Cuttack GPO
Dist-Cuttack-753 001

...Responde

nts

By the Advocate(s)-Mr.U.B.Mohapatra

ORDER

HON'BLE SHRI R.C.MISRA, MEMBER(A)

The applicant, who was an employee of the Department of Posts and was working as Sub Post Master (in short SPM) of Barundei S.O. in account with Jajpur H.O. regularly with effect from April, 2007 and even before that he was working in the same capacity on deputation with effect from 30.11.2006, has

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approached this Tribunal with a prayer for quashing the order issued by the Superintendent of Post Offices, Cuttack North Division dated 19.7.2011 in which it was directed to recover the House Rent Allowance (in short HRA) which was regularly paid to the applicant, from his retiral benefits since in the meantime the applicant has retired from service.

2. The facts of the case are that the applicant was first sent on deputation to Barundei S.O. as SPM with effect from 30.11.2006 and while working as such, he was also regularly posted as SPM of Barundei SO with effect from 1.4.2007 by the Respondent No.3, i.e., Superintendent of Post Offices, Cuttack North Division. After his regular posting, he informed the inspecting staff as well as Respondent No.3 regarding the unsuitability of the Postal quarters and requested them to rectify the position. He also made a representation to Respondent no.3 on 14.9.2007 ventilating the problems whereupon the Respondent No.3 assured him that his problems would be looked into. But even thereafter, since no action was taken to solve the problems, the applicant sent a reminder on 9.6.2009 to the Respondent No.3. In spite of all these steps taken by the applicant, no action was taken to connect the electricity, provide water supply and repair the roof of the postal quarters. Respondent No.3 also did not take any steps to declare the postal quarters as unsuitable for habitation. In the meantime, HRA was sanctioned in favour of the applicant from April, 2007 onwards. Now after the retirement of the applicant, Respondent No.3 has directed the Post Master, Jajpur H.O. to recover the HRA already paid to the applicant from his retirement benefits. The Post Master was also asked to explain why such irregular drawal of HRA was made and intimate the name of the official who is responsible for such irregular drawal. This direction of the SPOs is paced at Annexure-A/4 and this order is under challenge



in this O.A. The applicant also made a representation thereafter to Respondent No.3 mentioning that the office was functioning in the ground floor of the building and there was only one bed room and a small room in the up-stair where there was no water supply, over-head tank or electric connection. The applicant mentioned also in the representation that he did not occupy this quarters and this fact was intimated to Respondent No.3. He was residing somewhere outside. He has made this point that the quarters were absolutely unfit for habitation and therefore, house rent allowance already paid to him should not be recovered. The applicant also has made another representation to the Chief Post Master General, Orissa Circle, Respondent No.2 in this O.A. on 16.8.2011 which is placed at Annexure-A/6 of the O.A.. In this representation he mentioned that he had pointed out about the unsuitability of the quarters to Respondent No.3 and the quarters were also inspected by ASPOs, Shri Golak Chandra Mohanty on 21.11.2007 during which he informed the ASPO that he was residing outside due to disconnection of electricity line in the departmental quarters, lack of watering in the first floor, leakage of water from the roof and non-existence of over head tank. He had a seven members family and the quarters was much below the minimum requirement of such a family. He was allowed to draw HRA from the date he joined in the Post Office till June, 2011. But all of a sudden, without assigning any reason and without serving on him a show cause, the Superintendent of Post Offices, Cuttack North Division, i.e., Respondent No.3 stopped drawal of HRA and instructed the Post Master, Jajpur H.O. to recover the overpaid HRA from the retiral benefits. It appears that this representation has not evoked any response from the Respondent No.2 in this O.A. The applicant has further submitted that HRA is a due which cannot be



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recovered from the pension or gratuity of a retired employee. Moreover, he has not received HRA by misrepresentation of the facts and the HRA was sanctioned regularly by the concerned Postmaster In-charge. In spite of the several representations that he had made no steps were taken to get the quarters repaired. Therefore, not only that the order of recovery is illegal but also the principles of natural justice ^{ve} has been violated in this case because reasonable opportunity was not afforded to him to explain his position before the order of recovery was passed by Respondent No.3. These are the facts and circumstances, in which the applicant has made the prayer for quashing the order of recovery which is placed at Annexure-A/4.

3. On the other hand, the Respondents by filing a counter have contested the claims made by the applicant. They have pointed out that Barundei S.O. is functioning in its own two storied building and suitable rent free post quarters with all facilities is available ⁱⁿ with the up -stairs of the post office building for the residents ^{ce} of the SPM and prior to joining of the applicant, his predecessor was residing in that quarters. The present applicant also took charge of this quarters from his predecessor on 1.12.2006. Even though he took possession of the quarters, house rent allowance was drawn in his favour by the Postmaster Jajpur HO mentioning due to the fact that the applicant was initially on deputation as SPM to Barundei SO and subsequently, the applicant joined as regular SPM on 20.3.2007. Thereafter the applicant is required to reside in the quarters and therefore, he is not entitled to any HRA. But the Postmaster, Jajpur SO ^{irregularly} regularly drew the HRA in favour of the applicant from the date of his joining as SPM on regular basis till the month of June, 2011. The matter regarding ^{ir} regular drawal of HRA in favour of the applicant was brought to the notice of Respondent No.3 by

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the service union during the month of July, 2011 and since the applicant was by that time on the verge of retirement, the Postmaster of Jajpur HO was directed to recover the HRA that was ^{ir}regularly paid from the retiral benefits of the applicant since there was no other source of recovering from the applicant. In the counter affidavit, it is further pointed out that the provisions of attached quarters free from rent to the SPM is a condition of service under Rule-37 of P & T Manual, Vol6 Pt.1. As per the departmental HRA and CCA Rules, those occupying or refusing Government accommodations are not eligible for house rent allowance. Where there is no provision of postal quarters, the SPM is entitled to HRA in lieu of rent free accommodation. But in the instant case, when suitable post quarters was available at Barundei S.O. with **all basic facilities** the applicant as SPM was required to reside in it and was not entitled to any HRA. It is further pointed out in the counter affidavit that the applicant submitted a representation dated 16.8.2011 to the CPMG, Orissa Circle, (Res.No.2) which is still pending for consideration and without waiting for the results of the representation, he filed the present O.A. before this Tribunal for redressal of his grievance. It is of interest to note here that in the counter affidavit, the Respondents have disputed the claim of the applicant that the matter regarding unsuitability of the postal quarters was ever brought to the notice of the higher authorities during his four years of incumbency as SPM, Barundei SO. The Respondents have further averred that the annual repair and maintenance of Barundei SO and SPM quarters has been carried out from the year 2007-08 vide work order issued to Assistant Engineer(Building), by the Office of CPMG, Orissa Circle in Memo dated 28.2.2007 when the applicant was working as SPM, Barundei SO. There was therefore, nothing wrong in the orders passed by Respondent No.3 in the instant case. It has



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been re-emphasized in the counter affidavit that the problem relating to lack of water, disconnection of electric line, leakage of water from the roof as mentioned was never pointed out by the applicant to the higher authority. Moreover, the postal quarters for the SMP in Barundei SO has not been dequarтерized officially. Therefore, the applicant as SMP was required to stay inside this quarters and was not entitled to any HRA.

4. Having heard the learned counsels for both the sides, I have perused the records. It is not required to again to mention those aspects of the matter which have been admitted by the learned counsels for both the sides. There is a specific point of dispute in the counter affidavit which is of vital importance in this case. The applicant has mentioned that he has been writing to the concerned authorities, viz. Respondent No.3 pointing out the lack of basic facilities in the SPM quarters at Barundei SO. In this regard, he has filed copy of a letter dated 14.9.2007 addressed to Respondent No.3 in which the difficulties of occupying the quarters have been mentioned. The applicant has made a request to construct a boundary wall and remove the various other difficulties and also provide for an extra room for keeping the family with seven members. Further, the applicant has filed at Annexure-A/3, a copy of his reminder letter dated 9.6.2009 in continuation of his earlier letter informing that no steps have been taken for renovating postal quarters and providing other amenities. In this letter he has made a request to take up the matter with the AE(Civil) and also provide him alternate accommodation. In the face of this application, in the counter the Respondents have clearly stated that the applicant never pointed out lack of basic facilities in the postal quarters to Res.No.3. This is a major point of



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difference between the submission made by the applicant and the submission offered by the Respondents in the counter affidavit.

5. The Respondents have emphasize in the counter affidavit that the applicant under the Rules is supposed to stay in the rent free quarters provided to him and where there is a provision of postal quarters for the SPM, house rent allowance cannot be paid. The postal quarters were not dequarterzised and therefore, the applicant had a duty to stay in the postal quarters. There is no doubt with regard to the matter that the applicant should have stayed in the rent free postal quarters provided to him as SPM, Barundei SO. However, having said so we have to also consider the merits of this particular case in the face of various facts which have been brought to the notice of this Tribunal. In the present case, the applicant has claimed that he found the quarters to be highly unsuitable for occupation because of lack of electricity, watering etc. and therefore, brought this situation to the notice of Respondent No.3 with a request to rectify the position right from the date of his joining. He has also filed copies of such letters that he had sent in this regard. There is nothing on record about the official reaction to the applicants letter that he had sent on 14.9.2007 and 9.6.2009. If these letters were actually sent and received by Respondent No.3, the Respondent No.3 had a duty to look into this matter and take specific steps after due inspection of the said quarters. The applicant has also mentioned to Respondent No.3 in his letter dated 26.7.2011 that one Shri Golaka Chandra Mohanty, the then ASPOs (Out Door) Cuttack North Division had seen the conditions of the quarters and made a specific note in his inspection "remark". In view of this, I am constrained to observe that Respondent No.3 has not been adequately responsive to



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situation. He could have taken some specific steps in the matter and also given some specific direction to the applicant. This observation will hold good of course if the representations of the applicant were actually received by the Respondent No.3. The counter affidavit mentions that the applicant never pointed out the difficulties in the quarters to Respondent No.3. However, copies of the representations have been produced by the applicant before this Tribunal. There is a prima facie case that Respondent No.3 has not discharged his duties in this situation if he had received the representations of the applicant. It appears that the situation has been allowed to continue till June, 2011, during which period the HRA was paid to the applicant. However, in 2007 itself, the problem could have been looked into and sorted out by the concerned authorities. If the Respondent No.3 would have made a proper field inspection and found out the conditions of the quarters, the situation would not have continued like this. The concerned authorities had the option ^{to} either to provide the basic facilities in the quarters if the complaints of the applicant were found to be true. On other hand, they could have also given a specific direction to the applicant from the beginning to stay in the departmental quarters failing which HRA would not be admissible to him. There is no doubt that the situation has been allowed to continue by the concerned authorities for a pretty long period of time and the concerned Postmaster of Jajpur H.O. who is however not a party in this case has sanctioned HRA in favour of the applicant. Therefore, I consider this to be an administrative failure on the part of the Respondents.

6. It is however, interesting to note that the applicant in his representations dated 14.9.2007 and 9.6.2009 has also made some unreasonable demands like construction of a boundary wall and making of an extra room for keeping a family

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of seven members. In the letter dated 9.6.2009, it appears that no steps have been taken by the AE(Civil Wing) to get the post office and quarters renovated. The Respondents on the other hand have averred in the counter affidavit that annual repair and maintenance work of Barundei SO and SPM quarters were carried out during the year 2007-08. In support of this claim they have filed at Annexure-R/5 a letter which had been issued by the Assistant Engineer(Building) to the contractor to start work of annual repair for civil and maintenance to the post office building and SPMs quarters at Barundei. This letter is dated 28.2.2007. On this point also the claim made by the applicant and the facts submitted by the Respondents are in dispute with each other. There is therefore, absolutely no doubt that the required administrative steps to sort out this matter were duly not taken resulting in this situation.

7. Another interesting point which can be highlighted is that the applicant has submitted that he stayed outside and not in the postal quarters. But he has not said where actually he had stayed and whether this fact was known to the Postmaster of Jajpur HO while sanctioning HRA.

8. The Respondents have also submitted in the counter affidavit that the representation dated 16.8.2011 made by the applicant to Respondent No.2, CPMG, was pending ^{for} consideration when the applicant approached the Tribunal for relief and therefore, the representation could not be considered.

9. As stated above, there are several grey areas regarding the facts of this case. It is not clear under what circumstances the HRA was sanctioned in favour of the applicant and whether as to the sanction of HRA the Respondents were aware of the stand taken by the applicant that the postal quarters was not habitable. The circumstance under which the applicant was allowed to draw his HRA for a

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 very long time without any interference by the higher authorities^{is} also in fact an administrative ^{gap} ~~gap~~ which is not been explained by the facts available before the Tribunal in this case. Therefore, it will be required to find out whether the Respondents in full knowledge of the situation allowed the applicant to stay outside and drew HRA. This is a matter of fact which has to be ascertained by the concerned authorities, particularly, Respondent No.2 in this case. The learned counsel for the applicant has pleaded that HRA ^{that} ~~what~~ has already been paid to the applicant cannot be recovered from his retiral dues. However, if the demand is pending on account of an irregular payment made to the applicant, the Respondents would be within their power to withhold this amount. In this regard, the decision of the Hon'ble Supreme Court in Civil Appeal No.5899 of 2012 (Chandi Prasad Unniyal vs. State of Uttrakhand&Ors (AIR 2012 SC 2951), in which the Hon'ble Apex Court has observed as follows.

"Any payment paid/received without authority of law can always be recovered barring a few exceptions of extreme hardships, but not as a matter of right; in such situation law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment".

10. In consideration of the case therefore, the applicant cannot make a claim that if the HRA has been wrongly paid to him cannot be recovered. The issue finally boils down to the fact whether a decision has been taken by the concerned authorities that the HRA paid to the applicant has been wrongly drawn and whether before arriving at such a conclusion, the Respondents have afforded an opportunity to the applicant to explain his side of the case according to basic principles of natural justice, "audi alteram partem". On the other hand, it is very clear that the order passed by Respondent No.3 (Annexure-A/4) has been passed without obtaining the explanation of the applicant and without considering the

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entire gamut of facts and circumstances which have been mentioned in the earlier paragraphs of this order. It is also admitted by the Respondents that the CPMG, Orissa Circle was still considering the representation of the applicant dated 16.8.2011 which is filed at Annexure-A/6 when the applicant approached this Tribunal for relief. It is quite evident therefore that the departmental authorities have not given a full consideration to this matter after hearing the applicant in this case. The principles of natural justice demand that in the instant case such a consideration is required to be given by the Respondents before disposing of the matter. In view of the above, I have no hesitation to quash the Annexure-A/4 issued by Respondent No.3, which is hereby quashed. In the circumstances, I direct Respondent No.2, i.e. Chief Post Master General, Orissa Circle, to consider the various issues raised by the applicant in his representation dated 16.8.2011 pending before him and also cause ^{an} inquiry into the circumstances of this case after taking into ^{account} the various observations by this Tribunal made above and thereafter, come to a reasonable finding which shall be communicated to the applicant through a speaking order, within a period of 90 days from the date of receipt of this order.

With the observations and directions made above, the O.A. is disposed of.
No costs.

BKS


(R.C.MISRA)
MEMBER(A)