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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 245 of 2010
Cuttack, this the 3rd January, 2011

Niranjan Nayak Applicant
-v-
UOI and others Respondents

C O R A M
THE HON'BLE MR. C.R. MOHAPATRA, MEMBER (A)

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Prayer of the Applicant in this OA is for direction to the Respondents to release his House Rent Allowance(in short HRA) and Conveyance Allowance (in short CA) during his incumbency as Sub Postmaster, Debidol SO from 12.09.2006 to 19-06-2009 after quashing the order rejecting his claim under Annxure-A/11 dated 19.04.2010.

2. The contention of the Applicant is that Respondent No.4 vide Memo No.B/G-75 dated 31.8.2007 intimated the Respondent No.2 that the standard of accommodation required for C class SO comes to 1115 Sq.Ft against plinth area of 652 Sq.ft including post quarter. The rooms of the post quarter in question are very small and in one room of post quarter the post office Almirah and records are kept and used as Store Room. The electricity connection was disconnected since there is pending bill amounting to Rs.61,193/- and the post quarter is also in a

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dilapidated condition and is not habitable and also the Respondent No.4 recommended for de-quarterization. He has also placed reliance on the correspondence made in this regard so also the periodical inspection report stating that the quarter in question was not habitable for the stay of the Applicant.

3. According to the Respondents, in their counter filed in this case, the Applicant is not entitled to HRA & CA for the reason that prior to his promotion to Postal Assistant cadre, the Applicant (Niranjan Nayak) was working as Gramin Dak Sevak in Balikuda SO. After his promotion to postman cadre he worked as Postman and officiated as O/S Mails at Balikuda SO from 17.10.1977 to 13.07.1981 as a result he had rendered his entire period of service at Balikuda and Borikina SO which are within 8 KM radius of his native place. After that he was transferred to Devidol. His permanent residence is only 1 KM away from Balikuda. Borikina is 7 KM away from Balikuda. So he has spent more than 30 years in two offices namely Balikuda and Borikina. When he was posted at Devidol he became suffocated because he was in habit of residing at home getting HRA. It has further been stated that he being a senior official used to work as PA rather than working as SPM in single

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handed/double handed offices. The Devidol post office is functioning in the existing building since 1.3.1975. Previously nobody has ever complained about the unsuitability of the building. On his posting as SPM, Devidol the applicant did not occupy the quarters taking lot of pleas. The applicant is not residing in the said quarter and commuting between Devidol and Nagpur (Balikuda) daily. The post office in question is having the Post attached quarter in which the predecessor of the applicant was residing. The quarter was vacant from the day of the joining of the applicant. As per the Rules 37 of Postal V, Manual Vol.VI, Part I (Annexure-R/1) applicant was supposed to reside in the said quarter. When the applicant joined as SPM Debidol the quarter was habitable. Since the applicant did not intentionally and deliberately on some plea or the other occupied the quarters he is not entitled to the relief claimed in this OA and this OA is liable to be dismissed.

4. A rejoinder has been filed by the Applicant more or less stating the same thing as has been stated in the OA.

5. It reveals from the record that with this prayer applicant earlier approached first in OA No. 276 of 2008. Considering the rival submission of the parties made with reference to the pleadings and materials placed on record,

in order dated 21st October, 2009 this Tribunal disposed of the matter. Relevant portion of the order is quoted herein below:

3. In view of the above, without expressing any opinion on the merit of the matter, this Original Application is disposed of with liberty to the applicant to make a detailed representation incorporating the document relied on in his rejoinder to the Respondent No. 2 within a period of seven days hence. On receipt of such representation, the Respondent No.2 is hereby directed to consider and dispose of the same with a reasoned and speaking order and communicate the result thereof to the Applicant within a period of 60 days. No costs.

6. RA No. 16 of 2009 filed by the Applicant seeking review of the aforesaid order was dismissed by this Tribunal on 07.12.2009. Thereafter, in compliance of the order of this Tribunal, by making representation dated 21.12.2009 by placing materials he tried to justify his claim for payment of the House Rent & Conveyance Allowances for the period from 12.09.2006 to 19.06.2009. He has also taken support of the decision of this Tribunal dated 21.10.2009 rendered in OA No. 463 of 2008. The Respondent No.2 rejected the claim of the applicant and communicated the decision to the applicant in letter dated 11th February, 2010. The said order of rejection was challenged by the Applicant in OA No. 111 of 2010. This Tribunal, in order dated 16th March, 2010

disposed of the matter relevant portion of the order reads as under:

4. Having heard the rival submissions of the parties perused the materials placed on record including the earlier orders of this Tribunal vis-à-vis the order under challenge. I find substantial force in the contention of the Learned Counsel for the Applicant as it is seen that all the points taken in the representation of the applicant have not been taken into consideration by the Respondent No.2 while giving consideration and rejecting the representation of the Applicant. As such, for the ends of justice and to avoid waste of time, it is deemed fit and proper to dispose of this Original Application at this admission stage by quashing the order under Annexure-A/9 with direction to Respondent No.2 to give a fresh consideration to the grievance of the Applicant and pass a reasoned order under initiation to the Applicant within a period of 30(thirty) days from the date of receipt of this order. Ordered accordingly.

7. The prayer of the Applicant has again been rejected in Annexure-A/11 dated 19th April, 2010 against which the Applicant has approached this Tribunal in the present OA with the aforesaid prayer.

8. By reiterating the stand taken in the respective pleadings, Learned Counsel appearing for both sides have prayed for the relief in support of their claim and having heard them at length perused the materials placed on record.

9. Order of rejection under Annexure-A/11 for grant of HRA & CA for the period from 12.09.2006 to 10.06.2009 speaks as under:

"This is regarding compliance of the direction of Hon'ble Central Administrative Tribunal, Cuttack Bench, Cuttack dated 16.03.2010 in OA No. 111/10 filed by Shri Niranjana Nayak, Ex-SPM, Debidol SO and presently working as SPM, Borikina SO.

The Hon'ble Tribunal in its order, dated 16.03.2010 directed the Respondent No.2 that is Chief Postmaster General, Orissa Circle to consider the representation dated 21-12-2009 to give a fresh consideration to the grievance of the applicant and pass a reasoned order and speaking order within a period of 30 days. The Judgment as above was received on 29-03-2010. The said Sri Nayak in his representation has requested for payment of HRA in lieu of rent free accommodation for the period from 12.09.2006 to 10.06.2009 as SPM, Debidol on the plea of unsuitable and insufficient accommodation of the SPM.

Shri Nayak joined as SPM Debidol SO on 12.9.2006. After joining he represented to the SPOs, Cuttack South Division, Cuttack as well as to this office for dequarterization of the post quarters on the plea that the post quarters of Debidol SO is not suitable for residence of the SPM. The post quarters has not been dequarterized by the competent authority.

The present SPM staying in the post quarters at Debidol SO has not represented for HRA in lieu of post quarters nor has he been given HRA in lieu of post quarters. In fact he has accepted the post quarters which is ready for occupation.

The representation of the applicant and report dated 07.04.2010 of the Superintendent of Post Offices, Cuttack South Division and other records have been considered as per the rulings

of the Directorate regarding post quarters meant for Postmasters/Sub Post Masters.

The claim of the applicant for payment of HRA for the period 12.9.2006 to 10.6.2009 as SPM Debidol SO has been considered in the light of above discussion and rejected as the same is not admissible as per the departmental rules and instructions on the subject and also because the same is not justified."

10. The reasons given in letter of rejection seem contrary to the record as could be evident from the contents of the letter under Annexure-A/5. Full text of the letter under Annexure-/5 is reproduced herein below:

"In continuation of this office letter of even no. dated 17.8.2007, the facts of the case is that Debidol C class delivery SO is functioning in the rented accommodation provided by Kanchanbala Padhi At/Po-Debidol. The SPM is provided with post quarter. The standard of accommodation required for C class delivery SO comes to 1115 sqft (copy enclosed) against available plinth area of 652 sft including Post quarter.

On receipt of representation of Sri Niranjan Nayak, the ASPOs, I/C Jagatsinghpur Sub Division made spot visit and submitted his report stating that the rooms of the post quarter are very small and in one room of post quarter the SPM has kept post office Almirah and records and used as store room. This is to mention that the electricity connection to the post office has been disconnected since there is pending bill amounting to Rs.61193/- and the said bill is under enquiry. The post quarter is also in dilapidated condition. Hence the post quarters is not habitable and it is recommended for dequarterisation.

Sri Niranjan Nayak SPM, Debidol joined as SPM Debidol on 12.09.06. He submitted one representation on 12.9.06 stating that he has not taken possession of post quarter since it is not

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habitable. He further requested that necessary order for drawal of house rent in lieu of rent free accommodation may be sanctioned in his favour. As per Director of Estate OM No.12035 (21)/90-POI.11 dtd 4.10.1991 (instruction under SR 316 A of FRSR Part-I, the successor should take possession of post quarter on his joining. The official joined on 12.9.06 but failed to take possession of post quarter in violating above instructions. Hence no order was issued for drawal of his HRA in lieu of rent free accommodation to the postmaster Jagatsinghpur HO.

The Asst. Engineer Civil has proposed to visit the office on 4.7.07 but due to his otherwise engagement it was not feasible. Basing on the report of the ASPOs Jagatsinghpur Sub Division and IR remark of Para 46 of IR dtd 26.11.99 (ASPOs I/C Jagatsinghpur) and Para 34 of IR dtd.2.11.01 of SPOs Cuttack South Dvn., it is proposed to dequarterised Debidol post quarter. Moreover as per CO letter No. Inv/Misc.-17/04 dtd.11.7.05 (copy enclosed) the proposal to shift the Post Office to other rented building has not been materialized due to non-availability of suitable accommodation."

11. From the contents of the letter it is clear that the post quarter was not in habitable position for the stay of the Applicant. It was also inadequate according to the yardstick of the space for the post quarter. Merely because the predecessor was and successor is residing in the quarters cannot be a ground to deny the applicant his legitimate right to get the HRA & CA in lieu of the accommodation. Applicant has been agitating the difficulty and expressing his inability to reside in the quarters. Non-availability of

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suitable
~~suitability~~ accommodation cannot be a ground to compel the applicant to reside in the post quarters which is inadequate and having no minimum requirement for one's residing. It is not the case of the Respondents that the applicant was residing in the said quarters for the period in question. The reason of rejection shows without proper application of mind to the fact available on record. This apart, getting of HRA & CA when the post attached quarters was not adequate for residing came up for consideration before this Tribunal in OA No. 463 of 2008 filed by one Paramananda Nanda claiming HRA & CA for the period from 26.5.2004 to 25.5.2005 as he was not residing in the post attached quarters as the same was not commensurate with his status and position. The said OA was disposed of by this Tribunal on 21st October, 2009 directing payment of the HRA & CA for the aforesaid period. Relevant portion of the order is extracted herein below:

"5. As it appears, the above stand has again been reiterated in the report submitted by Respondent No.5 under Annexure-A/10 dated 08.11.2005 and Annexure-A/12 dated 20.02.2006 while meeting the queries made by Respondent No.4. From the above, it is clear that the quarters in question were not according to the entitlement of the Applicant. None can be insisted to do something beyond the rules. Similarly, none can be compelled upon to stay in a quarters which is not in accordance with his entitlement.

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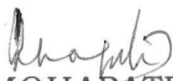
Government is under obligation to provide quarters to its employees and in case of non-availability of quarters according to the entitlement of an employee the employee concerned is entitled to HRA. On going through the report submitted by the Respondent No. 4 in my opinion there remains nothing further to hold that in not occupying the quarters in question the applicant had violated the relevant rules. In the circumstances, it is nothing but fair to hold that non-payment of the HRA and CA in lieu of the quarters cannot be justified. That the predecessors of the Applicant were occupying the quarters cannot be a ground to insist on the Applicant to reside in the quarters which was admittedly inadequate, in other words unsuitable for the applicant to stay. However, I refrain from quashing the order under Annexure-A/14 & A/16 in rejecting the prayer of the applicant for dequarterisation of the Post quarters; as quashing of the orders would tantamount to depriving the successor of applicant who might have been interested to take the quarters even with such deficiency.

6. In view of the discussions made above, as the Applicant did not occupy the quarters in question for the period he was holding the post, the Respondents are hereby directed to grant the Applicant HRA and on fulfilling the condition CA for the period from 26.05.2004 to 25.5.2005 within a period of 60 days from the date of receipt of this order."

12. Similar grievance also came up for consideration in OA No. 141 of 2010 [Kabir Charan Mallick v Union of India and others]. This Tribunal allowed the prayer made in the OA by directing the Respondents to make payment of the HRA for the period from 1.10.2005 to 31.3.2009 to the Applicant therein.

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13. On examination of the facts and issues involved and decided by this Tribunal in earlier two OAs (referred to above) vis-à-vis the facts and issue involved in the present case, I find no reason to differ from the view already taken in earlier cases. After going through the letter under Annexure-A/5, I also do not find any justifiable reason to uphold the decision taken in Annexure-A/11 dated 19.04.2010 rejecting the claim of the applicant. Hence the order of rejection under Annexure-A/11 is hereby quashed. The Respondents are hereby directed to sanction and disburse the HRA/CA for the period from 12.09.2006 to 19.6.2009 within a period of 60(sixty) days from the date of receipt of this order.

14. In the result, with the aforesaid observation and direction this OA stands allowed. There shall be no order as to costs.


(C.R. MOHAPATRA)
Member(Admn.)