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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.Nos.974 & 977 of 2012
Cuttack this the 22nd day of April, 2014

IN OA No.974/12

Paresh Kumar Ghosh...Applicant
-VERSUS-
Union of India & Ors....Respondents

IN OA No.977/12

Sanjeeb Kumar Samanta...Applicant
-VERSUS-
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *yes*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? *yes*

Q. Misra
(R.C.MISRA)
MEMBER(A)

A. Patnaik
(A.K.PATNAIK)
MEMBER(J)

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

IN OA No.974/12

Paresh Kumar Ghosh
Aged about 53 years
S/o. late Subodh Kumar Ghosh
At present working as Assistant
O/o. Joint Director
Subsidiary Intelligence Bureau (SIB)
Bhubaneswar
Dist-Khurda
permanent resident At-Bacherapati
PO-Jatmi,
Dist-Khurda

...Applicant

By the Advocate(s)-M/s.D.R.Pattnaik

N.Biswal

N.S.Panda

-VERSUS-

Union of India represented through

1. The secretary
Ministry of Home Affairs
New Delhi-110 001
2. The secretary,
Ministry of Finance
Department of Expenditure
Govt. of India
New Delhi-110 001
3. The Director
Intelligence Bureau (IB)
Ministry of Home Affairs
Govt. of India
New Delhi-110 001
4. The Joint Director

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Subsidiary Intelligence Bureau (SIB)
Ministry of Home Affairs
Govt. of India
Kohima
Nagaland

5. Assistant Director (E)
Subsidiary Intelligence Bureau(SIB)
Ministry of Home Affairs
Govt. of India
Kohima
Nagaland

6. Assistant Director (E)
Subsidiary Intelligence Bureau (SIB)
Ministry of Home Affairs,
Govt. of India
Unit-5,
Bhubaneswr

...Respondents

By the Advocate(s)-Mr.S.Barik

IN OA No.977/12

Sanjeeb Kumar Samanta
Aged about 48 years
S/o. late Raghunath Samanta
At present working as Junior Intelligence Officer (I), M/T
O/o. Assistant Director
Subsidiary Intelligence Bureau (SIB)
Berhampur
Dist-Ganjam
permanent resident At-Sastrinagar
1st Lane,
PO-Goshaninuagaon
Berhampur
Dist-Ganjam

...Applicant

By the Advocate(s)-M/s.D.R.Pattnaik
N.Biswal
N.S.Panda
-VERSUS-

Union of India represented through

1. The secretary

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Ministry of Home Affairs
New Delhi-110 001

2. The secretary,
Ministry of Finance
Department of Expenditure
Govt. of India
New Delhi-110 001
3. The Director
Intelligence Bureau (IB)
Ministry of Home Affairs
Govt. of India
New Delhi-110 001
4. The Joint Director
Subsidiary Intelligence Bureau (SIB)
Ministry of Home Affairs
Govt. of India
Kohima
Nagaland
5. Assistant Director (E)
Subsidiary Intelligence Bureau (SIB)
Ministry of Home Affairs
Govt. of India
Kohima
Nagaland
6. Assistant Director (E)
Subsidiary Intelligence Bureau (SIB)
Ministry of Home Affairs,
Govt. of India
Unit-5,
Bhubaneswar

 ...Respondents

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

ORDER

R.C.MISRA, MEMBER(A):

Since both the Original Applications pertain to the same subject matter, they are being disposed of through this common order.

 R.C. Misra

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2. Applicants in both the O.A. have approached this Tribunal praying that order dated 27.11.2012 passed by the Intelligence Bureau, Ministry of Home Affairs, which has been placed at Annexure-A/9 be quashed and the Respondents be directed to extend the benefit of HRA @ B Class city, i.e., 20% of the basic pay to them within a prescribed time frame. Whereas applicant in O.A.No.974/12 has made the above claim for HRA for the period from 21.4.2007 to 21.4.2010 applicant in O.A.No.977/12 has claimed for the period from 30.10.2006 to 20.4.2010.

3. Brief facts of the case are that applicant in O.A.No.974 of 2012 is at present working as Assistant under the Joint Director, Subsidiary Intelligence Bureau, Bhubaneswar whereas applicant in O.A.No.977/2012 is working as Junior Intelligence Officer,(i) under the Assistant Director, Subsidiary Intelligence Bureau, Berhampur. Both the applicants were posted in the Office of Assistant Director, SIB, Kohima in the State of Nagaland. Applicant in O.A.No.974/2012 joined in that office in Kohima on 21.4.2007 and on being transferred from Kohima to Bhubaneswar was relieved from Kohima on 21.4.2010. On the other hand, applicant in O.A.No.977/2012 joined at Kohima on 30.10.2006 and on being transferred to Bhubaneswar, he was relieved from Kohima with effect from 20.4.2010. The subject matter of both the O.As is regarding payment of HRA for the period they had worked at Kohima.

4. It is the case of the applicants that in pursuance of the recommendations of the 4th CPC, the entire state of Nagaland was treated

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as B Class city and the persons posted there were entitled to the benefit of HRA @ 20%. But in the 5th Pay Commission report, Kohima & Dimapur in the state of Nagaland were classified as 'C' Class city in which HRA @ applicable to general category was made applicable. The Ministry of Finance, Government of India brought out an O.M. dated 3.10.1997 . Clause-3 of the said O.M. stipulated that the cities/towns which have been placed in a lower classification in the above mentioned lists as compared to their existing classification shall continue to retain the existing classification until further orders and the Central Government employees working therein will be accordingly to draw the rates of CCA and HRA accordingly.

After the issue of this O.M., the employees were allowed HRA @ applicable to B Class city as per the 4th CPC recommendations. The above benefits were granted since similarly situated employees of the Posts & Telecommunication Department working in the state of Nagaland had been granted the benefit of B Class city as per the Presidential order dated 8.1.1962. While the matter stood thus, in the year 2002, Respondent No.3, i.e, Director, Intelligence Bureau decided to recover HRA which was paid @ applicable to B Class city to the employees of SIB who were posted at Kohima and Dimapur in the State of Nagaland . This order of recovery was challenged before the Hon'ble High Court of Guwahati in W.P. © No.149(K)/2002 and subsequently, it was transferred to C.A.T., Guwahati Bench which formed the subject matter of O.A.No.230/2004. The Tribunal in their order dated 16.12.2005 held that if Clause-3 of the OM dated



3.10.1997 existed and continued, then the applicants shall be entitled to get higher rate of HRA which should be paid to ^{them} ~~him~~ without any delay.

Respondents challenged this order of the Tribunal before the Hon'ble High Court of Guwahati in W.P. ©No.1035/2007. The Hon'ble Guwahati High Court vide order dated 23.12.2009 upheld the orders of the Tribunal. The Respondents filed SLP © CC - No.13266/2010 before the Hon'ble Supreme Court which was dismissed on 1.9.2010. Since applicants were posted to Kohima they submitted representations to Res.No.4 but to no effect. However, Respondent No.5 vide Office Memorandum dated 30.6.2011 intimated that the benefit of HRA at B class city rate will be extended to the applicants only and cannot be extended to the non-petitioners. Aggrieved with the above communication, some of the employees as that of the applicants herein moved the C.A.T., Guwahati Bench in O.A.No.148/2011.

The C.A.T., Guwahati Bench vide order dated 26.7.2011 quashed the said Office Memorandum dated 30.6.2011 and directed the Respondents to extend the benefit of aforesaid judgment by granting benefit of HRA @ B class city, i.e. 20% of the basic pay to the applicants with all consequential benefits within a stipulated time frame.. Consequent upon receipt of the order dated 26.7.2011, Respondent No.4, the Joint Director, SIB, Kohima brought out an order dated 7.12.2011 intimating that it has been decided in consultation with the Ministry of Finance that the benefit would be applicable only to the applicants, i.e., petitioners and in the circumstances, applicants in O.A.No.148/11 before C.A.T, Guwahati Bench have got this

benefit. It is the case of the applicants that although they are similarly situated employees having been posted along with the employees who were the applicants in O.A.No.148/2011 before the CAT, Guwahati Bench, but they have been deprived of the benefit of the HRA on the ground that the this would be applicable only to the petitioners who had filed OA No.148/2011 before the CAT, Guwahati Bench. According to applicants, such action of the Respondents is illegal and arbitrary as they being similarly situated persons as that of the applicants in O.A.No.148/2011 should not be denied this benefit as per the orders of the Court. Being aggrieved, applicant in O.A.No.974/12 had filed O.A.No.647/12 and applicant in O.A.No.977/12 had filed O.A.No.648/12 before this Tribunal . The Tribunal after hearing the matter disposed of both the O.As on 13.9.2012 by directing Respondent No.4 to consider and dispose of representation made by the applicants with a reasoned and speaking order within a period of one month from the date of receipt of the order. In compliance of the orders of the Tribunal, Joint Director, SIB, Kohima, Res.No.4 had passed a reasoned and speaking order on 27.11.2012 in respect of the applicants in both the OAs. This order dated 27.11.2012 has been challenged by the applicants herein. It is to be noted here that applicant in OA.No.974/2012 has made a further prayer for quashing the order dated 23.5.2012(Annexure-A/6).

5. By filing counter reply in both the OAs, Respondents have taken a common stand point. They have submitted that the Department of Posts

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and Telegraph implemented the judgment of the Tribunal of Guwahati Bench in O.A.No.42(G)/1989 in the case of S.K.Ghosh vs. Union of India & Ors. dated 31.10.1990 by allowing HRA applicable to B Class city rates from May, 1980 to the P&T employees. However, it was challenged by the Government of India in Civil Appeal© No.2705/91 before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide their judgment dated 18.2.1993 upheld the findings of the CAT, Guwahati Bench, but the benefit was allowed from the date of effect of the revised HRA rates as recommended by the 4th CPC, i.e., 1.10.1986. Initially the benefit of the judgment was restricted to the applicants of the cases, but later on the Government agreed to extend the benefit to all the P & T employees. The employees of the I.B. also raised their grievances to be given this benefit as extended to P & T employees and accordingly, they filed O.A.No.37/95 in CAT, Guwahati Bench. The CAT, Guwahati Bench passed their judgment on 22.8.1995 and allowed the benefit of HRA in lieu of rent free accommodation at B Class city rates from 1.10.1986 to 22.2.1991. Due to misinterpretation of the judgment, SIB at Kohima continued to make payment of HRA at B Class city rates to the applicants beyond 22.2.1991. Thereafter, the Government of India directed to make recovery of the excess amount paid towards HRA to the applicants vide MHA order dated 14.1.2002. Challenging this order of recovery, W.P.(C) No.149/2002 was filed in the Hon'ble Guwahati High Court which was subsequently transferred to CAT, Guwahati Bench for disposal. The CAT, Guwahati Bench

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in its judgment dated 16.12.2005 stated that pursuant to 5th CPC report as per the general order dated 3.10.1997, Kohima and Dimapur were classified as Class-C cities whereas Clause-3 of MOF dated 3.10.1997 stipulated that the employees who were getting higher rate as per earlier order would continue to retain the existing classification until further orders and directed the Respondents to consider the question of applicability of Clause-3 of OM dated 3.10.1997 in the case of the applicants and pass appropriate orders. Thereafter, a Writ Petition was filed in the Hon'ble High Court of Guwahati by the Respondents which was disposed of vide judgment dated 23.12.2009 directing that there should not be any recovery if it is found that they were paid HRA more than what they were entitled to after 3.10.1997 as such payment was not made due to misrepresentation on the part of the Respondents. It was further directed that if it is found that Clause-3 of OM dated 3.10.1997 still existed and continued in the case of the present respondents, then they shall be entitled to get higher amount of HRA and accordingly, they shall be paid the same. The CAT Guwahati Bench vide order dated 16.12.2005 in O.A.No.230/2004 decided that if Clause-3 of MoF, O.M dated 3.10.1997 existed and continued the applicants were entitled to higher amount of HRA. It is further mentioned in the counter affidavit that in the Civil Appeal No.2705/91, the Hon'ble Supreme Court observed that : " It is not disputed that the Presidential order dated 8.1.1962 is still operative. State of Nagaland having been equated to B Class cities by the Presidential order, the Respondents were

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entitled to be paid HRA @ rate which have been prescribed for the Central Government employees posted in B Class cities". The CAT, Guwahati Bench vide order dated 26.7.2011 in O.A.No.148/2011 had directed to verify the factual details and if the applicants were found to be similarly situated, the benefits of the HRA for Class B city at the rate 20% to be extended to the applicants. The Respondents had examined this order of the Tribunal and came to the conclusion that as per the well settled principles of law, the benefit flowing out an order of a Court should be extended to similarly placed persons. The further submission of the Respondents in the counter affidavit is that in supersession of all earlier orders, the Government vide OM dated 29.8.2008 have revised the earlier classification of cities as X, Y & Z with rate of HRA 30%, 20% and 10% respectively, but no relaxation for continuing higher rates as contained in Clause-3 of OM dated 3.10.1997 is available under this order. Kohima & Dimapur have been categorized as Z class city with effect from 1.9.2008 and now the employees posted therein are eligible for HRA @ 10%.

6. In the counter affidavit, the Respondents have on the question of extending the benefits of the judgment to persons similarly placed have quoted the views of the Ministry of Law that similarly placed persons cannot be denied the benefit of a Court case. It is well settled principles of law that benefit flowing out of an order of a Court should be extended to similarly situated persons if that order becomes final and declaratory in nature. They have further quoted the decision of the Hon'ble Supreme

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Court in Ashwini Kumar case 1972(2) SCC-1 = 1077)1_ SLJ 178(SC) in which it has been decided that non-extension of such benefit will amount to violation of Articles 14 and 16 of the Constitution. In view of the advice of the Law Ministry and with the further concurrence of the Ministry of Finance, it was decided to implement the order dated 26.7.2011 of the Tribunal in respect of only the applicants in O.A.No.148/11 if they are similarly situated as that of the applicants in O.A.No.230/2004. Respondents have submitted finally that the applicants are not entitled to higher rate of HRA as they were posted to SIB, Kohima from 2006/2007 to 2010 whereas, the Ministry of Finance in supersession of all earlier orders on regulating payment of HRA, has classified Kohima & Dimapur as C Class city for the purpose with effect from 1.4.2004. Further, on the recommendation of the 6th CPC, MOF in their OM dated 29.8.2008 revised earlier classification of cities and has classified X, Y and Z with the rate of HRA 30%, 20% and 10% respectively. Kohima and Dimapur have been categorized as Z class city with effect from 1.9.2008 and the employees posted in these cities are eligible for HRA @ 10%.

7. Learned counsel for the applicant and Respondents have filed their written note of submissions. Having heard the learned counsel for the parties in extenso we have also perused the records.

8. The history of various Court cases on this matter has already been narrated in the earlier paragraphs. On perusal of the judgment and order dated 23.12.2009 passed by the Hon'ble High Court of Guwahati, it is

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found that W.P.(C) No.1035/07 was filed against the orders of the Guwahati Bench of the Tribunal in O.A.No.230/2004 in which a direction was issued to the Respondents (Writ Petitioners in W.P. © No.1035/2007) to consider the question of applicability of Clause-3 of OM dated 3.10.1997 and pass appropriate orders. The Hon'ble High Court, after hearing this matter decided that the findings and directions given by the Guwahati Bench of the Tribunal were rightly recorded which required no interference. Accordingly, Writ Petition was dismissed. It is to be noted here that the Ministry of Finance, Government of India in its OM dated 3.10.1997 under Clause-3 stipulated that the cities and towns which have been placed in a lower classification in the above mentioned list, as compared to their existing classification shall continue to retain the existing classification until further orders and the Central Government employees working therein will be entitled to their rates of CCA & HRA accordingly. It has to be noted that the SIB (MHA) brought out OM dated 30.6.2011 in which it was mentioned that a proposal for extension of benefit of Guwahati Bench judgment dated 23.12.2009 to all IB employees posted in Nagaland was taken up with the Ministry of Home affairs in March, 2011. MHA examined the proposal in consultation with the Ministry of Finance and conveyed that in certain Courts judgments, the petitioners in those court cases posted in Nagaland have been drawing HRA at B Class city rates, but as these orders of the Court are in deviation of the extant policy of the Government with regard to eligibility to the grant of HRA at the stipulated

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rates, they are applicable only to the applicants and cannot be extended to non-petitioners/all similarly placed employees in general. It is further mentioned in the same Memorandum that consequent upon implementation of the recommendations of 6th CPC, the existing categories of old class cities and unclassified places have been clubbed together and have been put under a new category Z with HRA at the rate 10% of the pay with effect from 1.9.2008. It is noticed that an Original Application bearing No.148/2011 was filed before the CAT, Guwahati Bench by some of the employees who were not extended the benefit of HRA as applicable to B class cities. Their submission was that they should be given the benefit of the judgment of the Tribunal in O.A.No.230/2006 which was confirmed by the Hon'ble Guwahati High Court in judgment dated 23.12.2009 in W.P.(C) No.1035/07. It is further mentioned that the SLP filed before the Hon'ble Apex Court was also dismissed on 1.9.2001. The attention of the Guwahati Bench of the Tribunal was drawn to OM dated 30.6.2011, which has been mentioned above. The Guwahati Bench observed that the Respondents have treated the judgment as a judgment in personem and not in rem. Such a plea was not acceptable inasmuch as the principle of parity has to be followed by the concerned Department. The Respondents ought to have followed those principles while fixing HRA at par with other similarly situated persons. But they have forced the applicants to approach the Tribunal. Further, it observed that the policy of the state is that law should not be protracted; otherwise great oppression might be done under the

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colour and pretense of law. This principle is canonized in well known dictum : INTEREST REPULICA UT SIT FINIS LITUM. Taking into consideration all the aspects of the case, Guwahati Bench of the Tribunal had set aside and quashed the impugned Memorandum dated 30.6.2011 of the SIB, MHA, GOI. However, it further directed the Respondents to verify the factual details and if the applicants are found to be similarly situated, the benefit of aforesaid judgment be extended by granting the benefit of HRA at B Class city at the rate of 20% of the basic pay to the applicants. In consideration of the above orders of the Guwahati Bench of the Tribunal dated 26.7.2011, it is quite clear that OM dated 30.6.2011 has lost its validity and therefore, the Respondents cannot confine the benefit of the judgment only to the applicants before the Court.

9. Under challenge is the order dated 27.11.2012 which was issued by the respondents in compliance of the earlier orders of this Tribunal. In the reasoned and speaking order which has been issued by the authorities, it is found that they have not found it feasible to extent the benefit to the present applicants, because in OM dated 3.10.1997, it was directed that the cities/towns which are placed in lower class in the list as compared to their earlier classification shall continue to retain the existing class until further orders and the Central Government employees working therein will be entitled to draw the rates of CCA & HRA accordingly. The present applicants in both the OAs were posted to SIB, Kohima during 2006/2007 to 2010 which is after the implementation of 5th CPC, i.e. 3.10.1997 and are

not entitled to HRA at B Class cities rates. Since the dispensation available in Clause-3 of OM dated 3.10.1997 is not available to them as the above clause was meant to protect the existing incumbents drawing higher rates of HRA under Government orders prior to implementation of the recommendation of the 5th CPC. However, Clause-3 stipulation is with regard to the cities and towns which are placed in a lower classification compared to the existing classification at the time of implementation of 5th CPC recommendations. Therefore, it is the status of the cities/towns which will determine the rate of HRA and not the fact that the present applicants joined after the date of implementation of the 5th CPC. The other reason taken by the Respondents is that consequent upon implementation of the recommendation of 6th CPC the existing categories of C class cities and unclassified places have been clubbed together and have been put under a new category Z with HRA @ 10% of pay w.e.f. 1.9.2008. This means that the payment of HRA with effect from 1.9.2008 is with regard to new category Z. It is accepted that the rate of HRA will be as per the Z category with effect from 1.9.2008 on implementation of classification under the 6th Pay Commission recommendation. However, before that, applicants would be governed by the OM dated 3.10.1997. The stipulation under Clause - 3 in the same OM is applicable until further orders and therefore, with the operation of classification under 6th CPC with effect from 1.9.2008, the applicability of Clause-3 would be abrogated with effect from that date only and in effect, applicants are entitled to get the benefit of HRA @ 20% HRA

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of B class city with effect from their respective joining at Kohima till
31.8.2008.

10. We have already discussed the earlier orders of the Guwahati Bench of the Tribunal as well as the Hon'ble Guwahati High Court in great detail. Guwahati Bench of CAT in O.A.No.148/2011 in their order dated 26.7.2011 has made it very clear that the judgment of the Hon'ble High Court of Guwahati was a judgment in rem and not in personem and the Respondents are bound to follow the principle of parity in implementing the judgment of the Court which was declaratory in nature. They cannot take different trends of HRA for the same category of persons. In view of the above discussion, we hold that the decision of Guwahati Bench of the Tribunal in O.A.No.148/2011 is squarely applicable to the case of the applicants herein. Accordingly, Annexure-A/9 dated 27.11.2012 and Annexure-A/6 dated 23.5.2012 in so far as O.A.No.974/12 is concerned are quashed and set aside.. Accordingly, Respondents are directed to extend the benefit of HRA @ 20% as applicable to B Class city to the applicants with effect from their respective date(s) of joining at Kohima till 31.8.2008 within a period of three months from the date of receipt of this order.

In the result, both the OAs are allowed to the extent indicated above.

No costs.

R.C.MISRA
(R.C.MISRA)
MEMBER(A)

A.K.PATNAIK
(A.K.PATNAIK)
MEMBER(J)

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