

28

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.Nos.975 & 976 of 2012
Cuttack this the 25th day of April, 2014

IN OA No.975/12

K.P.Pattnaik ...Applicant
-VERSUS-
Union of India & Ors.....Respondents

IN OA No.976/12

P.Pradhan ...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*

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

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

29

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.Nos.975 & 976 of 2012

Cuttack this the 25th day of April, 2014
CORAM

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

IN OA No.975/12

Kirti Panna Pattnaik
Aged about 58 years
S/o. late Laxmidhar Pattnaik
At present working as Assistant Central Intelligence Officer(I),
Motor Transport
O/o. Joint Director
Subsidiary Intelligence Bureau (SIB)
Bhubaneswar
Dist-Khurda
permanent resident At- Plot No.1012,
Dumduma
PO-Dumduma
DistKhurda
PIN-751 019

...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
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.P.R.J.Dash

IN OA No.976/12

Prafulla Pradhan
Aged about 47 years
S/o. late Madhab Pradhan
At present working as Junior Intelligence Officer (I),
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

3)

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
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.D.K.Bhera

ORDERR.C.MISRA, MEMBER(A):

R.C.MISRA

32

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

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 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.975/12 has made the above claim for HRA for the period from 01.05.2006 to 30.4.2009 applicant in O.A.No.976/12 has claimed for the period from 30.1.2006 to 27.7.2010. Incidentally, it may be mentioned that applicant in O.A.No.975/2012 has prayed for quashing Memorandum dated 29.5.2012 issued by Respondent No.5.

3. Brief facts of the case are that applicant in O.A.No.975 of 2012 is presently working as Assistant Central Intelligence Officer(I) under the Joint Director, Subsidiary Intelligence Bureau, Bhubaneswar whereas applicant in O.A.No.976/2012 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.975/2012 joined in that office in Kohima on 1.5.2006 and on being transferred from Kohima to Bhubaneswar was he relieved from Kohima on 30.4.2009. On the other hand, applicant in O.A.No.976/2012 joined at Kohima on 30.1.2006 and on being transferred to Bhubaneswar, he was relieved from Kohima with

9
Devi

33
 effect from 27.7.2010. The subject matter of both the O.As is regarding payment of HRA for the period they had worked at Kohima.

4. Respondents have filed their counter opposing the prayer of the applicants in both the O.As. They have submitted that the O.As being devoid of merit are liable to be dismissed. It may be mentioned that the main thrust of the counter in the present OAs is the same as was in O.A.Nos.974 and 977 of 2012.

5. We have heard learned counsel appearing for the respective parties and also perused the records. We have also gone through the written note of submissions filed by both the sides in both the O.As.

6. It is to be noted that since the subject of matter of dispute is no more res integra in view of the decision taken by this Tribunal vide common order dated 22.4.2014 in O.A.Nos. 974 and 977 of 2012, we do not feel it inclined to deal with the matter in its entirety. However, in the fitness of things, Paragraphs-8, 9 and 10 of the common order dated 22.4.2014 in O.A.Nos.974 and 977 of 2012 which are germane to decide the present OAs are quoted hereunder.

“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 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



34

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 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



35

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 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.

34

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 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

Dee

37
 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".

7. Having regard to the ~~foregone~~ conclusion in the similar matters, we quash order dated 27.11.2012 in both the OAs in respect of the applicants. Also, we quash Annexure-A/8 dated 29.5.2012 in so far as O.A.No.975 of 2012 is concerned. Accordingly, we hold that the applicants herein are entitled to the benefit of HRA @ 20% as applicable to B Class city with effect from their respective date(s) of joining at Kohima till 31.8.2008, which should be calculated and paid to them 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)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

BKS