

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 576 of 2005

Wednesday, this the *19th* day of July, 2006

C O R A M:

HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

V.K. Vidyadharan,
Retired Sub Postmaster,
Thalyolaparambu,
Now residing at Karikkanal House,
Kothanellur Village, Manjoor Post,
Kottayam : 686 603.

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Applicant.

(By Adovate Mr. P.R. Padmanabhan Nair)

v e r s u s

1. The Senior Superintendent of Post Offices,
Kottayam Division,
Kottayam : 686 001
2. Assistant Director,
O/o. Postmaster General,
Central Region, Kochi – 682 016
3. Postmaster General,
Central Region, Kochi – 682 016
4. Chief Postmaster General,
Kerala Circle, Trivandrum

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Respondents.

(By Advocate Mr. P.M. Saji, ACGSC)

This application having been heard on 12.7.06, the Tribunal on *19-7-06* delivered the following:

ORDER

HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

The applicant claims payment of House Rent Allowances for the period
from 22-05-2001 to 30-01-2003 as he did not occupy the free quarters attached



to the post office to which he was posted as sub post master, in view of the fact that the house was far from the state of habitation and in this regard he had right at the beginning he had approached the authorities describing the condition of the free quarters.

2. Brief facts as contained in the OA are as under:-

- (a) The applicant was working as Sub Postmaster, Thalayolaparambu Post office from 22.5.2001 to 31.1.2003. During the said period, the applicant did not use the quarters attached to the Post Office since the same was not occupyable. The applicant had informed the above fact to the Senior Superintendent of Post Offices, Kottayam Division, in time.
- (b) The Postmaster General, Central Region, Kochi, visited the Post office on 30.1.2003. There was a visiting remarks on 30.1.2003 by the said Postmaster General. In para 10 of the aforesaid visiting remarks, it is stated that "no one wants to occupy the quarters and for the last 6 years, it is lying vacant with the windows and doors damaged due to non-use. Spending few thousands, this building can be repaired and used as Transit accommodation."
- (c) The applicant inspite of his representations while in service did not get the HRA for the above period of his work. Even after retirement, the applicant submitted representation before the first and third respondents. The applicant submitted a representation to the Senior Superintendent of Post Offices,



Kottayam Division on 17.3.03. He represented to the Postmaster General (third respondent) on 19.3.04 as there was no reply from the Senior Superintendent of Post Offices, Kottayam. As there was no reply from the third respondent, the applicant again submitted a reminder to the above respondent on 17.5.04. The applicant received rejection memo dated 22.7.04 from the Assistant Director, Office of the Postmaster General, Central Region, Kochi. Aggrieved by the rejection of applicant's claim, the applicant made a representation to the Chief Postmaster General, Kochi, on 20.1.2005. The applicant is aggrieved by Annexure A/1 impugned order dated 22.7.03 received on 24.7.04.

3. The respondents have contested the OA. They contended that Thalayolaparambu Post Office is provided with post-attached rent free quarters for the Sub Postmaster. Where such post-attached quarters are provided, Sub Postmaster is bound to occupy the quarters and sleep in the premises as required under Rule 37 of Postal Manual Volume VI Part-I. House Rent Allowance shall not be admissible to those Government servants who occupy the accommodation provided by Government or to those to whom accommodation has been offered by Government but who has refused it. As per rules cited above, the applicant is bound to occupy the quarters from the date of his joining the post on 28.5.2001 till it was dequarterised on 30.12.03. The Senior Superintendent of Post Offices has neither received any letter from the applicant seeking permission for not occupying the quarter attached to the post of SPM, Thalayolaparambu in which he was working nor

he was exempted from occupying the quarters. True, the Postmaster General , Central Region, Kochi, in his visit report on Thalayolaparambu Post Office dated 30.1.2003 has mentioned that none wants to occupy the quarters and for the last 6 years it is lying vacant with windows and doors damaged due to non-use. Spending few thousands the building can be repaired and used as Transit accommodation. Later, Thalayolaparambu Post Office was dequartered with effect from 30.1.2003. The applicant was informed through Annexure A1 that he is not entitled for HRA and Conveyance Allowance with effect from 28.5.01 to 29.1.03. and accordingly, HRA in lieu of rent-free quarters for 2 days (i.e. 30.1.03 and 31.1.03) has been paid to the applicant vide office memo dated 10.3.04.

4. Additional reply has also been filed by the respondents wherein they had annexed documents to sequentially narrate the steps taken by them to have the quarters repaired and the amount spent on such repairs. On his part the applicant had furnished certain documents in one of which, the dequarterization took place with retrospective effect, vide order dated 24-02-2004 and in another, the department had stated that the applicant having not occupied the building of his own volition due to personal reasons, such personal reasons cannot be a cause for dequarterization from an earlier period. It has been also stated in that letter that the applicant had not made any representation to the effect that he would not be occupying the said free quarters..

5. The above no doubt provides for free accommodation and the condition that if such accommodation is provided, the postmaster is required to sleep in the premises.

6. The counsel for the applicant contended that he would have moved to the said accommodation had the same been in habitable condition. On seeing the poor condition, he had penned down a detailed representation to the authorities as early as 6th June 2001 and requisite repairs were not done and as per the report of the PMG as of 30-01-2003 the house was not in a habitable condition. And, since he had to make arrangements for his residence in a rented accommodation, for the period he was not enjoying the govt. accommodation, he should be paid the H.R.A. but the respondents rejected the claim on unjustifiable grounds.

7. Arguments were heard and the documents perused. Rule 37 relied upon by the respondents reads as under:-

"37. Free quarters for postal officials: Free quarters are allowed to Postmasters and such other establishment as it may be necessary for the proper discharge of the work of a Post Office to have residence on the premises. Where such free quarters are provided, the Postmaster is required to sleep on the office premises."

8. The general principle on entitlement to grant of house rent allowance is contained in the judgment of the Apex Court in the case of Director, Central

Plantation Crops Research Institute v. M. Purushothaman, 1995 Supp (4) SCC 633 wherein, the Apex Court has held as under:-

"8. HRA would be covered by the definition of compensatory allowance. It is compensation in lieu of accommodation. This definition itself further makes it clear that compensatory allowance is not to be used as a source of profit. It is given only to compensate for the amenities which are not available or provided to the employee. The moment, therefore, the amenities are provided or offered, the employee should cease to be in receipt of the compensation which is given for want of it."

9. The fact that there is a free quarters is not disputed. But what is questioned is that the said house, admittedly, having not been under occupation since 1997 had, according to the applicant, been in such a condition that it was not fit for habitation at all. This resulted in his immediately approaching the authorities pointing out innumerable shortcomings and repairs as early as in June 2001 i.e., within a few days of his taking over charge as Sub Post Master. It was only by March, 2002 that certain repairs were carried out. The applicant during the period from May 2001 till the date of retirement Jan 2003 could not occupy the accommodation and in his communication dated 19-03-2004 (Annexure A-5) he had stated that in view of the condition of the free quarters he had resided in another rented house. The question that falls for consideration is whether availability of a house unfit for habitation could be considered as an accommodation offered to the applicant. The purpose of accommodation is to ensure safety and security to the government servant, in addition to accessibility

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to the office. If the very purpose could not be served in view of the multiple deficiencies in the house, including the damaged doors and windows, whether the said accommodation could be considered as one offered but refused to be accepted by the applicant. Answer to this question is to be only an emphatic 'NO'. For, an accommodation offered should be one which is fit for habitation. Just as right to life enshrined in Art. 21 of the Constitution means right to live with human dignity, offer of an accommodation should also correspond to the status of the employee wherein he could reside with that kind of respect commensurate with his status. If the house is full of defects, with broken doors and windows, accessible to the entry of animals and reptiles, that house can never be termed as one suited to the status of the applicant. Thus, non occupation of the accommodation was on account of an inevitable situation. The accommodation would then be deemed not to have been offered.

10. The house was no doubt got repaired in March 2002. Yet the applicant did not occupy the same. The question is whether it is on account of the fault of the applicant or the respondents. Here again, if the report of the PMG is considered, the house remained in such a state that it was not fit for occupation. Thus, notwithstanding the fact that the house was got repaired, the repair was only with reference to the bathroom fittings, pipe settings etc., The benefit of the above repairs would have been that the twelve odd employees in the post office would have been benefited of water supply etc. The applicant cannot be faulted for his non occupation. Of course, he could have insisted for full repairs but



then, in all expectation, he would have made arrangements for living on a rented accommodation for a minimum period. Dequarterization of the accommodation made on 30-01-2003 resulted in the applicant's being paid HRA for one day, and this confirms the entitlement of the applicant to draw HRA. Delay in dequarterization on the part of the respondents cannot disentitle the applicant to claim HRA for the period anterior to the date of dequarterization as the applicant because of the poor condition of the accommodation made available to him had make alternate arrangements by paying rent.

11. In view of the above facts and circumstances, the OA succeeds and it is declared that the applicant is entitled to the house rent allowance for the period from 22-05-2001 to 29-01-2002 (he having been granted HRA for 30-01-2003 and 31-01-2002 vide para 4 of the counter). Respondents are directed to work out the House Rent Allowances due to the applicant and pay the same. The payment shall be made within a period of three months from the date of communication of this order.

12. Under the circumstances, there shall be no orders as to cost.

(Dated, the 19th July, 2006)


K B S RAJAN
JUDICIAL MEMBER

cvr.