

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.88/04

Wednesday this the 16th day of February 2005

C O R A M :

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

A.Gopalakrishnan,
Assistant Central Intelligence Officer Grade II (Rtd.),
Panchavadi, Kademberry, Kanul P.O.,
Kannur District – 670 564. ..Applicant

(By Advocate Mr.Antony V Paul)

Versus

1. Controlling Officer,
Deputy Central Intelligence Officer,
O/o. The D.C.I.O., Kannur.
2. The Joint Director,
Subsidiary Intelligence Bureau,
Thiruvananthapuram.
3. Union of India represented by Secretary,
Ministry of Home Affairs, North Block,
New Delhi. ..Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

This application having been heard on 16th February 2005 the
Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant while working as Assistant Central Intelligence Officer Grade II in the Intelligence Bureau at Kannur was suomoto allotted quarter No.III-D/12 at SIB Complex, Kannur vide Annexure A-1 order dated 15.3.2002 in which it was inter alia indicated that if he failed to occupy the quarter within eight days the allotment would stand cancelled. Finding that the quarter was not convenient for his occupation as it was not having facilities like fan, tubelight etc. the

applicant vide his letter dated 6.5.2002 indicated his unwillingness to occupy the quarter. In the meanwhile it appears that one Sreekumar was in possession of the quarter. Since the applicant's HRA was deducted from his salary the applicant applied for release of the HRA. Finding that the HRA was not released to him he made repeated representations and in reply to that the applicant was served with Annexure A-3 letter dated 1.8.2003 stating that taking a lenient view his HRA from 15.5.2003, the date on which the quarter was allotted to Shri.Sreekumar, was being released. He again submitted Annexure A-4 representation seeking refund of the amount of HRA recovered from his pay from 1.6.2002. Finding no reply the applicant has filed this application for a direction to the respondents 1 & 2 to release and pay forthwith HRA, Additional HRA to the applicant for the period from 1.6.2002 to 14.5.2003.

2. The respondents resist the claim of the applicant. They contend that in view of the audit objection in keeping the quarter without occupation the quarter in question was allotted to the applicant, that he intimated his unoccupation only on 6.5.2002, that as per the terms of allotment if a person refuses to occupy the quarter not only the allotment would be cancelled but he would also be deprived of HRA and LF and therefore the claim of the applicant is not sustainable.

3. I have carefully gone through the pleadings and materials on record and have heard the learned counsel on either side. It is an undisputed fact that the applicant did not seek the allotment of the quarter but the same was suomoto allotted to him in view of the audit objection that the quarter should not be left unoccupied and should be allotted to eligible persons, and that finding that the quarter allotted to him was not fit for his occupation the applicant did not occupy it. The allotment order itself contains a clause that if the applicant failed to occupy the quarter within eight days the allotment would be cancelled. Therefore even if the applicant did not intimate his unwillingness to occupy the quarter since the allotment would

stand cancelled by the order of allotment itself on the lapse of eight days I, therefore, find no justification in calling upon the applicant to pay the HRA and LF even inspite of the fact that he did not occupy the quarter. The clause in the allotment order (Annexure R-1) that a person who refuse to occupy the quarter would not be entitled to HRA and LF is unsustainable because nobody can be compelled to occupy the quarter even if it is fit for his occupation. It is also an admitted fact that from June 2002 onwards the quarter was occupied by one Sreekumar and HRA was being deducted from his pay. It is also evident from the pleadings that ultimately the quarter has been allotted to Sreekumar. For the one and the same quarter the respondents are not entitled to recover HRA from two persons. Further, the quarter was admittedly allotted to the applicant without any claim or application by him for allotment. The action of the respondents in allotting a quarter suomoto to the applicant who did not want to occupy it and withholding his HRA is unconscionable and illegal.

4. In the light of what is stated above I allow this application and direct the respondents to disburse to the applicant the amount of HRA and Additional HRA as also the Transport Allowance recovered from his pay from 1.6.2002 to 14.5.2003 within a period of two months from the date of receipt of a copy of this order. No order as to costs.

(Dated the 16th day of February 2005)



A.V. HARIDASAN
VICE CHAIRMAN

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