

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.295/02

Friday...this the....16th day of July, 2004

C O R A M :

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

K.Chithambaran,
Sub Postmaster,
Aluva North P.O.,
Aluva.

Applicant

(By Advocate Mr.P.C.Sebastian)

Versus

1. The Senior Superintendent of Post Offices,
Aluva Division, Aluva.
 2. The Director of Postal Services,
Central Region, Kochi - 682 016.
 3. The Postmaster General,
Central Region, Kochi - 682 016.
 4. Union of India represented by
its Secretary, Ministry of Communications,
Department of Posts, New Delhi.
- Respondents

(By Advocate Mr.M.Rajeev,ACGSC)

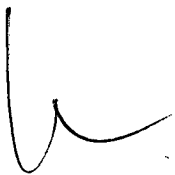
O R D E R

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant working as Sub Postmaster Aluva North Post Office (C class Sub Post Office) where an earmarked quarters is contemplated. According to the applicant due to certain family problems he choose to remain a bachelor to look after his mother who is aged 80 years. The Post Office is housed in a rented building and the Sub Postmaster has been provided quarters in a separate building owned by the same landlord at a distance of about 200 meters away. The quarters are not provided with attached bath room and toilets. The said quarters has been



remaining unoccupied for a long time and without annual maintenance and repairs. The electricity supply had been disconnected since 1998. Rule 37 of Postal Manual Vol.IV prescribed free quarters for postal officials and according to the applicant it must be provided in the same premises. Rent free quarters was provided when the Postal and Telecommunication services were under a single department and the post offices used to discharge most of the telegram and telephone works during the night hours and therefore the quarters invariably is to be provided in the same premises or at least in the same compound where the post office is located and 1st respondent himself is of the opinion that the continuance of the said post office is unnecessary in view of the availability of U.C.College Post Office close by reflected in the visit remark dated 5.11.1998. The copy of the letter addressed by the 1st respondent to the Asst. Executive Engineer KSEB Aluva for reconnect the electricity supply of the quarters at Annexure A-5 will show that the supply was remained disconnected. The applicant made representation to the 1st respondent to exempt the applicant from the liability to stay in the quarters pointing out the unusable condition of the same and the lack of basic facilities. Applicant's request for providing attached toilet facilities was also turned down by Annexure A-6 order. Aggrieved by Annexure A-6 order the applicant submitted representation to the 2nd respondent on 26.4.2001 which was replied stating that non-occupation of quarters will be at applicant's risk. Since 1st and 2nd respondents were unsympathetic and adopted an almost harassing attitude towards the applicant he made another representation to the 3rd respondent, the Postmaster General, on



23.8.2001 on the same grievances which was replied on 30.10.2001 stating that attached quarters means post attached and hence he is bound to occupy the post attached quarters. According to the applicant all these actions was initiated because of the inertia against him for filing O.A.609/01 against authorities before this Court seeking declaration that applicant is entitled to continue in service pursuant to his request for withdrawal of voluntary retirement. Aggrieved by the said inaction on the part of the respondents he has filed this O.A. seeking following reliefs :

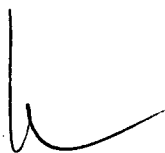
1. to call for file leading to the issue of Annexure A-6, A8 and A-10 and quash them.
2. to declare that applicant in the capacity of Sub Postmaster Aluva North is entitled to be provided with rent free quarters within the premises of the post office as per rule 37 of Postal Manual Vol.VI failing which to got House Rent Allowance in lieu of rent free quarters as admissible.

2. The respondents have filed a detailed reply statement contending that the Sub Postmaster is entitled to rent free quarters as a condition of service. After joining this post the applicant did not occupy the quarters for he may be desirous of drawing higher rate of House Rent Allowance. HRA can be admissible if no accommodation is provided. The accommodation of rent free quarter was provided at a distance of 150 meters. Toilet is provided adjacent to the quarters portion and applicant cannot insist to provide attached bathrooms. The quarters was left unoccupied for a short period and the former Sub Postmaster failed to remit the electricity charges for some time and hence the supply was disconnected. The amount was recovered from him and arranged remittance to KSEB. Thereafter the supply was got reconnected. The landlord was very much ready to attend to the



annual maintenance and the building damaged soon since it was not occupied. The department has not insisted that the applicant should sleep in the post office. The distance is hardly 150 meters. Bifurcation of the department into Department of Posts and Department of Telecommunications has no relevance in this case. Further the rule 37 of Postal Manual Vol.VI is not yet amended consequent on bifurcation of the Department. The suggestion of the 1st respondent to close the office was turned down by the review order and justified the continuance of the office. Inspection reports recorded by the offices a decade ago has no relevance as so many changes have occurred by this time. Post attached quarter is provided in the same premises though on the opposite side of the road, hardly 150 meters from Post Office Building and as such the applicant is liable to occupy the quarter as a condition of service. After assuming charge of office the applicant submitted a representation requesting exemption from the liability to stay in the quarters on flimsy grounds such as no attached toilet facilities etc. Aluva North Post Office is having post-attached quarters and the applicant is evading occupation on flimsy grounds. Government is paying the rent to the land lord who was ready to spend money on repairs but was worried to spend money as the quarter will be damaged by non-occupation by the incumbent after repair. Post attached does not mean that the quarter should be in the post office itself.

3. The applicant has filed a rejoinder contending that the applicant is ready and willing to occupy the quarter provided the same is fit for human habitation and with attached bed room for applicant's aged mother. The respondents have filed an



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additional reply statement to the rejoinder filed by the applicant and contended that the applicant has not chosen to occupy the quarters since he is not in need of quarters as he has his own home at Ernakulam. When he was SPM, Thottakkattukara he chose not to reside in it citing the reason, he was already having a house at Ernakulam. The previous occupant did not have any complaint and the alleged damage caused due to the non occupation by the applicant. The applicant did not make any protest but only represented that he has shifted his residence to Ernakulam and requested permission to keep the quarters vacant till its allotment to the next official and his allegation are without any basis and is not eligible for any House Rent Allowance.

4. Shri.P.C.Sebastian appeared for the applicant and Shri.M.Rajeev,ACGSC appeared for the respondents. Learned counsel for the applicant submitted that Rule 37 does not impugned an official to occupy the earmarked quarters and the allotment of the quarter is not attached to the post and he was not obliged to occupy the quarters and therefore he is entitled to get the HRA in lieu of the rent free quarters. Learned counsel for the respondents, on the other hand, submitted that Rule 37 of the Postal Manual Vol.VI has not been changed and the Government was paying rent to the land lord and since the quarters is attached to the post it is obligatory on the applicant to occupy the same therefore is not entitled to any HRA.

5. We have given due consideration to the arguments advanced



by the learned counsel and materials and evidence placed on record. The entire dispute revolves around the point whether the quarters is attached to the post or not. Learned counsel on either side relied on Rule 37 of Postal Manual Vol.VI and for a better elucidation the said rule is quoted as follows :

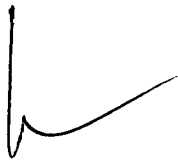
"37. Free quarters for postal officials :

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."

6. Admittedly the quarters is not provided in the same premises or compound but the interpretation of the rule will show that the quarters are allowed and provided to the postmasters for the proper discharge of work of the post office and if such quarters are provided in the same premises considering the exigencies of the work the postmaster is required to sleep on the office premises. The respondents contention is that the post attached quarters is provided in the same premises though on the opposite side of the road hardly 150 meters from the post office building and the applicant is liable to occupy the quarters. This situation has been considered by the Supreme Court in Civil Appeal No.885/1993 and in furtherance of the clarification on the subject the Chief Postmaster General vide memo dated 30.11.1994 has issued the following circular :

To

The Postmaster General,
Central Region/Northern Region,
All SSPOs/SPOs in Kerala Circle
SSRM 'IV'/'EK'/CT
Supdt., Postal Stores Depot,
Trivandrum/Trichur/Calicut
DDPA, Trivandrum - 10.
Manager, MMS, Ernakulam.



No.Bldg/12-1/94/VII/Blgs. Dtd. at TVM-33, the 30.11.94

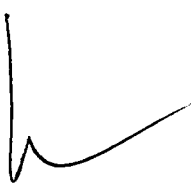
Sub : Liability of Govt. Servants to occupy Govt. accommodation offered to them or forgo HRA - Supreme Court judgement in Civil Appeal No.885 of 1993 filed by M/s.Central Plantation Corporation Research Institute, Kasaragod.

Please find enclosed a copy of the Hon'ble Supreme Court order in Civil Appeal No.885/93 regarding liability of Govt. servants to occupy Govt. accommodation offered to them or forgo HRA for information, guidance and necessary action.

In view of the Supreme Court orders Chief PMG has ordered that Departmental Quarters if any kept vacant should be allotted to the eligible officials immediately and if they refuses to take the allotments the HRA to be deducted from the salary of the officials concerned.

This disposes of the letter No.D/64/S.Qrs/Allotment dated 15.7.94 from SSPOs, Pathanamthitta."

7. Interpreting FR 9 (2) (i) (a) and FR 44 the Apex Court made it clear that HRA is a compensation in lieu of accommodation and it should not be used as a source of profit and it is given only to compensate for amenities which are not available or provided to the employees. Therefore the applicant cannot stand on technical/evasive ground in not occupying the quarters and we are of the view that his non occupation is willful which is reflected in Annexure R-6 representation in which he has said that "I have accepted the allotment and submitted that I am not using water and electricity at present and I may be permitted to make a representation to the concerned Department to waive the charges and the Department may not have any objection of my doing so. Annexure R-6 is dated 18.11.1999. It is also to mention that in a similar issue in O.A.1198/94 this Tribunal had observed in interpreting the said Rule 37 " meaningful way of reading the rule would be to understand the rule to mean that the Postmaster



should be available at all hours and that for this free quarters are provided in the office premises and that in such cases he should reside there. We are respectfully in agreement with the said proposition of law and the finding in the said OA. Since Rule 37 is self explanatory and the quarters being an earmarked one for the post attached, we are of the view that the applicant is not entitled for any relief claimed in the OA and the OA deserved to be dismissed. Consequent on the bifurcation of the Postal and Telecom Departments the telecommunication service is provided by the Telecom Department on their own arrangement and post officer's work in this regard has been reduced to the basest minimum and the necessity of postmasters sleeping in the office premises has become almost nil except in the case large and important offices where safety of the equipment and other valuables repairs attached quarters which invariably is to be provided in the same premises or at least in the same compound where the post office is located. The applicant submitted that the rule has become stale and obsolete. The respondents emphasised in the reply statement that so long as the rule has not been changed, the rule is still in existence and the applicant is bound to occupy the quarters. We are not making any opinion as to the alleged stale/obsolete position. However, we direct the Registry to send a copy of the O.A. and the order to Director General of Posts, New Delhi who may verify the factual position and make the required changes in the said Rules, if they deem fit in the circumstances of the case.

In the conspectus of facts of the case O.A. does not merit and we dismiss the O.A. accordingly. No order as to costs.

(Dated the..16.th day of July, 2004)

H. P. Das.

H.P.DAS
ADMINISTRATIVE MEMBER
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K.V.SACHIDANANDAN
JUDICIAL MEMBER