

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 390/2005

FRIDAY, THIS THE 28th DAY OF APRIL, 2006.

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

- 1 A Chenniappan S/o Avanasi Gounder
Senior Trackman/SR under SE/PW/E/PT(J)
No.8/66, Semmandam Palayam PO
Somanur Via, Coimbatore District.
- 2 R. Subramani S/o Ramasamy
Sr. Tackman/S/under SE/PW/E/PTJ
No.74 Sedapalayam PO
Somanur Via, Coimbatore District.
- 3 V. Palanaysamy S/o Vaiyapuri
Sr. Tackman/SR/under SE/PW/E./O/PTJ
Vaikkalpalayam, Supparayan Puthur PO
Somanur Via, Coimbatore District
- 4 M Lakshmanan S/o Muthusamy Gounder
Gangmate/SR/under SE/PW//PTJ
15/63 H2, Marappalam, Darmalingamkoil Street
Madukkarai PO, Coimbatore district.
- 5 P. Balasubramaniam S/o Palanisamy
Sr. Tackman/SR/under SE/PW/E./PTJ
2/15, Kambar Street, Ettimadai PO
Madukkarai Via; Coimbatore District.
- 6 M. Krishnakumar S/o Mayandi
Gatekeeper/SR/under SE/PW/E./O/PTJ
Ambazakode House, Pallasana PO
Chittur Via, Palakkad District.
- 7 A. Shanmugam S/o Ayyasamy
Sr. Tackman/SR/under SE/PW/E./O/PTJ
Sulur Via, Coimbatore District.
- 8 V. Chandran S/o Kuttan
Sr. Tackman/SR/under SE/PW/E./O/PTJ
C/o Stationmaster, Somanur PO
Coimbatore District.

9 V. Moosakoya S/o Abubakkar
RGK/SR/under SE/PW/E/PTJ
Walladathil House, Kadalandi PO
Calicut District, Kerala State.

10 N. Sivanandan S/o Narayanan
Gangmate/SR/under SE/PW/E/PTJ
Kilakkaduthu Kilakkathil, Thalava PO
Karunagappalli, Kerala State.

11 M. Vasu S/o Murugandi
Sr. Tackman/SR/under SE/PW/E./O/PTJ
C/o Station Master, Somanur PO
Coimbatore District.

12 S. Pushpam W/o Ukkuppayyan
Sr. Tackwoman/SR/under SE/PW/E./PTJ
No.9, Ramasamy Vathiar Street
Irugur P.O., Coimbatore District.

13 K. Chinnasamy S/o Kalimuthu
Gangman/SR/under SE/PW/E./O/PTJ
C/o Station Master, Somanur PO
Coimbatore District.

14 N. Sreedevi W/o Kumaran
Sr. Tackwoman/SR/under SE/PW/PTJ
C/o Station Master, Somanur PO
Coimbatore District.

15 K. Raman S/o Kandan
Sr. Tackman/SR/under SE/PW/E./O/PTJ
Kannodu (Opp) Kanjikode Railway Station
Kanjikode PO, Palakkad District.

16 N. Karuppannasamy S/o Nainan
Sr. Tackman/SR/under SE/PW/E./O/PTJ
No. 75/6, Charoh Road (Opp)
Somanur PO, Palladam Taluk
Coimbatore District.

17 C. Ramasamy S/o Chennimalai
Keyman/SR/under SE/PW/E./E/PTJ
6/60, Pillayarkoil Street,
Unjapalayam PO, Somanur (Vila)
Coimbatore District.

18 Mohanraj S/o Vishwanathan
Kenman/SR/under SE/PW/E./PTJ
Thenneerpanthal Kadu, SemmanDam Palayam PO
Somanur Via, Coimbatore District.

19 K. Chandrika D/o Krishnan
Sr. Tackwoman/SR/under SE/PW/W./E/PTJ
Thottingal House, Meleapuram, Vanganasala
Olavakkode PO, Palakkad District.

20 C.K. Valsala W/o Achuthan
 Sr. Tackwoman /SR/under SE/PW/W/PTJ
 Kanakavalli House, Meleapuram Vaganasala
 Olavakkode PO, Palakkad District.

21 A. Pugalenthhi S/o Arukmugam
 Keyman/SR/under SE/PW/E./PTJ
 Maruthipatty PO, Morappur Via
 Arur Taluk, Darmapuri District.

22 R.Muthusamy S/o Ramana
 Sr. Trackman/sSR/under SE/PW/E/PTJ
 NO. 40, MGR Nagar, sedapalayam Rioad
 Somanur Via, Coimbatore District.

23 C. Sundari W/o Sundaran
 Sr. tackwoman/sR/under SE/PW/W/PTJ
 Pallakkattuthodi House, Kivallore
 Parli PO, Palakkad.

Applicants

By Advocate Mr. TCG Swamy

Vs.

1 Union of India represented by the General Manager
 Southern Railway, Headquarters Office
 Park Town PO, Chennai-3

2 The Divisional Railway Manager
 Southern Railway, Palghat Division
 Palghat.

3 The Senior Divisional Personnel Officer
 Southern Railway,
 Palghat Division, Palghat

4 The Chairman
 Railway Board, Rail Bhavan
 New Delhi.

Respondents.

By Advocate Ms P.K. Nandini

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHARMAN

Applicants herein are Trackmen/Grangmates/Keymen working under the Section Engineer/Permanent Way of the Southern Railway, Palghat Division. They submitted a joint representation to the second respondent to grant the benefit of House Rent Allowance (HRA for short) as was given

to the applicants in O.A. 277/1998 who were identically situated like them. They are aggrieved by the rejection of their representation and hence approached this Tribunal through this O.A.

2 Somanaur Railway Station is a place situated within a distance of 8 KMs from the periphery of Coimbatore Urban Agglomeration which was notified as a B-1 class city for the purpose of grant of HRA. It is also stated that Somanaur depends upon Coimbatore UA for all its essentials and therefore, in terms of Rule 1705 of the Railway Establishment Code-Vol.II (REC for short), The applicants who were not provided with railway quarters are entitled to be paid HRA as applicable to B-1 cities. Some of the applicant's colleagues approached this Tribunal in O.A. 277/1998 and by order dated 22.2.2000 their prayer had been allowed. It was challenged before the Hon'ble High Court of Kerala in OP No. 19807/2000 and was dismissed by order dated 19.9.2003 (Annexure A-3). An SLP No. 8166 of 2004 filed before the Hon'ble Supreme Court by the respondents challenging Annexure A-3 judgment was also dismissed by order dated 16.11.2004 (Annexre A-4). After having come to know of the judgment of the Hon'ble High Court all the applicants submitted joint representation for granting the benefit to the applicants also since they were all working in the same place The Respondents Railways have passed the order now rejecting the representation as according to the Administration 8 Kms limit is to be reckoned not from the periphery limit of the Coimbatore UA but from the limits of the Coimbatore Corporation.

3 The contention of the respondents is that the claim of the applicants is not tenable in terms of the provision of the Indian Railway Establishment

Code. It is submitted that as per Rule 1705(2)(ii), a Railway employee working within a distance of 8 Kms from the periphery of the municipal limits of a qualified city should be allowed HRA at the rates admissible in that city even though they may not be residing within those municipal limits provided:

(i)that there is no other suburban municipality notified area, or cantonment within the 8 Kms limit and

(ii)that it is certified by the Collector/Deputy Commissioner having jurisdiction over the area that the place is generally dependent for its essential supplies e.g. food grains, milk, vegetables, fuel etc. on the qualified city.

4 It is submitted that the above provisions for grant of CCA and HRA to the Railway employees were introduced by the Railway Board's letter NO. PC-65/HRA-1/3 dated 22.7.1965 and have been modified from time to time. Pursuant to the Recommendations of the Third Pay Commission, the concept of Urban Agglomeration was introduced for payment of CCA to Central Govt. employees. It was stipulated therein that for the purpose of CCA, the limits of the locality shall be those of the named Urban Agglomeration adopted for the population Census of 1971, or, if the named place is not an Urban Agglomeration, the named Corporation/Municipality. Accordingly CCA was made admissible to persons whose place of work falls within the cities/urban agglomeration. For the purpose of these orders, the constituent units of an Urban Agglomeration should be as declared by Registrar General and Census Commissioner of India.

5 It is submitted that the concept of Urban Agglomeration was extended in respect of HRA also by Railway Board's letter No. PC(3)/

73/HRA dt. 26.12.1977. As per the instructions contained in the said letter dated 26.12.1977 (Annexure R-1), HRA is also be payable to the Railway employees within the area of Urban Agglomeration of classified city at the rates admissible in the classified city. It has further been stipulated that the existing provisions for the payment of HRA under Railway Board's letter dated 26.7.1967 will continue to be applicable only at place which are within 8 Kms of municipal limits of classified cities but which are not included within the urban agglomeration of any city subject to fulfillment of usual conditions. It is submitted that Siomanur is neither within 8 Kms of municipal limit of the classified city Coimbatore nor has been included with the urban agglomeration of the city.

6 It is further submitted that the provisions in Rule 1705 (2) (iii) which provides for HRA in the Railway Board's letter dated 22.7.1965 was extended for CCA also by Railway Board letter dated 7.12.89 (Annexure R-2). It has been stipulated therein that CCA at the rate of the qualified city is admissible to the Railway employees who are working at places within 8 Kms of the qualified city which is not an Urban Agglomeration town/city. It has been clarified that this concession will not be admissible in respect of places which are within 8 KMs of a qualified city/town which has been given the status of Urban Agglomeration town/city. It is submitted that even though the clarification has been issued only in respect of CCA, this clarification is applicable in respect of HRA also in view of the fact that this provision for CCA is an extension of the provision for Rule 1705(2)(iii) for HRA.

7 It is submitted that the phrases used in Rule 1705(2)(iii) is not within 8 Kms from the qualifying area of the city. The phrases used in the Rule

1705(2)(ii) so is "periphery of the municipal limits of the qualified city" and not "qualified area of the city." When a city is given the status of Urban Agglomeration, only its qualifying area for CCA and HRA is extended and not its municipal limits. Hence for the purpose of Rule 1705(2)(ii) and Rule 1705(2)(iii) of the Indian Railway Establishment Code, only the municipal limits of the qualified city should be taken into account irrespective of whether that city was given the status of urban agglomeration or not. In the list of cities where HRA is admissible to the railway employees, circulated as Annexure-II to the Railway Board's letter NO. E(P&A)II/90/HRA/CCA-18 dt. 19.7.1993, Coimbatore comes under the B-1 classification and has been mentioned as Coimbatore (UA). Such description in the list only means that HRA is admissible to those Railway employees working in the Coimbatore city and its urban agglomeration. Such description does not extend the municipal limit of the city upto the limit of the urban agglomeration. Hence the term "qualified city" cannot be applied to cover the area of urban agglomeration of the classified city. Thus, it is clear that the Railway employee is entitled to HRA if his place of work is within a distance of 8 Kms from the periphery of the municipal limits of a qualified city. The distance of Somanur Railway Station is not within 8 Kms from the periphery of the municipal limits of Coimbatore city and hence the applicants are not entitled to HRA at B-1 class city rate.

8 It is submitted that in OA 277/98 this Tribunal took an erroneous view of the matter and held that the term qualified city is not confined to municipal limits but includes urban agglomeration. The order of this Hon'ble Tribunal in O. A. 277/98 was implemented as the SLP filed by the Railway Administration was dismissed. It is submitted that the SLP was dismissed

on 16.11.2004 by a one line order and not by a detailed judgment. The question of law raised in the SLP was not decided in that judgment. Hence it cannot be held as a declaration of law for claiming higher rate of HRA by the applicants. The dismissal of SLP in limine without assigning the reasons as held by the Hon'ble Supreme Court itself in the case of Nawab Sir Mir Osman Alikhan Vs. Commissioner of wealth Tax (1986 Supp. SCC 700) does not lay down any law on the matter. The applicants have not produced any Railway Rules to establish that the 8 KM limit is to be reckoned from the agglomeration limit and not from the municipal limit of the city.

9 Further, the respondents also claimed that the prayer of the applicants if approved will cause heavy financial burden to the Railways and also to other Departments of the Central Government and that the claim itself is belated as they are now claiming HRA at the rate applicable to Coimbatore city from 1.3.1991 onwards.

10 I have heard the learned counsel on both sides and perused the material produced before me and the earlier judgment relied on by the applicants. The question that arises for consideration in this Application is whether the provisions of Para 1705 (2)(i) of the IREC envisages eligibility of HRA for places within 8 Kms within the peripheral municipal limit of the qualified city or from the qualifying area of the city/Urban Agglomeration. In short what is the definition of a qualified city used in the above rule whether it is confined to the municipal/corporation limits of the city or extends to the entire Urban Agglomeration. It was exactly the same issue which had come up for consideration in O.A. 277/1998 also filed by Senior

Gangmen working in the Track Maintenance Unit under the Permanent Way at the Somanur Railway Station. This Tribunal had come to the conclusion that Somanur Railway Station whether the Applicants were working is stated to be within 8 Kms from the periphery of Muthu Gounden Pudur Railway Colony and that it satisfied all the conditions of dependence as prescribed in the Rule which had been certified by the District Collector also. Therefore the term "qualified city" is not confined to Coimbatore Municipal Corporation but includes Coimbatore UA. Further it was held that the Railway Board's order dated 19.7.1993 with regard to classification of cities for the purpose of payment of HRA and CCA, has classified Coimbatore UA as B-1 city. Therefore Coimbatore (UA) is classified as B-1 city for the purpose of payment of HRA. Though the above order was taken in appeal before the Hon'ble High Court, it was dismissed stating that the findings of the Tribunal are based on facts and there are no grounds to interfere with the order of the Tribunal. The respondents have taken the matter in SLP which was also dismissed. Thus the order of the Tribunal has become final. It is also seen from the pleadings and records that the respondents have implemented the order and HRA is being paid at the rate applicable in the case of B-1 cities in so far as the applicants in that O.A. are concerned. There is no reason why similarly placed persons like the applicants herein should be denied of the benefit. The respondents have contended in the reply statement that this Tribunal has taken a wrong decision and that the SLP has been dismissed by a one line order and not by a detailed judgment. Hence the dismissal of the SLP in limine without assigning any reason cannot be held as declaration of law. This contention cannot be accepted as there was no such declaration of any legal principle in the order of the Tribunal. As rightly observed by the Hon'ble High Court

the order was only based on the factual position. Therefore the judgment having become final it is binding on this Bench and the respondents have no other option but to implement the same in respect of similarly placed employees.

11 I also find that the contention raised by the respondents in the reply statement are based on Railway Board's letter dated 7.12.1989 which has been enclosed as Annexure R-2. This letter has also been elaborately discussed in the judgment of the Tribunal in O.A. 277/1998 and the very same pleas made by the respondents now had been rejected out right. The Tribunal had also found that this letter refers to the demand of CCA and it does not pertain to payment of HRA which is under dispute in this O.A. It is rather strange that the respondents are again placing reliance on the very same letter. If there is any confusion in the mind of the respondents regarding the city limits and the concept of Urban Agglomeration which has now been brought in after 1967, the date of original order, they have to reconsider the provisions of the IREC referred to in the light of the developments extending the qualifying area of cities inclusive of Panchayats and Municipalities and thereby extending the periphery of such cities much beyond 8 Kms limits. While such an exercise can be undertaken separately, as things stand now, the interpretation given by the Tribunal in O.A.277/1998 will have to hold the field and the applicants will be eligible for payment of HRA as applicable to the notified area of Coimbatore UA. It has been mentioned by the respondents that the some of the applicants are no longer working at Somanur Railway Station and some had worked earlier for short periods. Hence I am unable to indicate any specific period for which each applicant

is entitled for payment but would only declare that they are entitled to be paid HRA for the period for which they worked at Somanur Railway Station in accordance with the Annexure A-1 judgment and direct the respondents to grant and pay the same accordingly within a period of three months from the date of receipt of this judgment. The O.A. is allowed. No costs.

Dated 28.4.2006.

Sathi
Nair

SATHI NAIR
VICE CHAIRMAN

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