

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 409 OF 2010

Friday..., this the 04th day of November, 2011

CORAM:

**HON'BLE Dr.K.B.S RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

A.K Arjunan
Aged 58 years
S/o Kittappan
Sub Postmaster, Kundaliyur
Trichur District
residing at
"Akkarakaran House"
Manaloor P.O, Thrissur

Applicant

(By Advocate Mr. Shafik M.A)

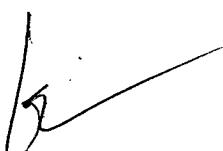
Versus

1. The Union of India, represented by Chief Postmaster General
Kerala Circle, Trivandrum
2. The Senior Superintendent of Post Offices
Department of Posts, Thrissur Division,
Thrissur
3. The Postmaster, Head Post Office
Thrissur

Respondents

(By Advocate Mr.M.V.S Nampoothiry)

The application having been heard on 31.10.2011, the Tribunal
on 04.11.11 delivered the following:



ORDERHON'BLE Dr.K.B.S RAJAN, JUDICIAL MEMBER

1. Brief facts:- The applicant is presently working as Sub Post Master, Kundaliyur which he took charge on 31-10-2008. The said Post office has an attached quarters for the sub post master. However, right from his predecessor time, the said quarter was, due to uninhabitable status, not occupied. The applicant also accordingly did not take over the accommodation. In fact, in respect of the said quarters, even prior to the taking over of the post of Sub Post Master Kundaliyur, by the applicant, there had been an annual inspection conducted on 14-03-2007 by the Assistant Superintendent Thrissur South Sub Division, vide Annexure A-3 report for the year 2007, which inter alia reads as under:-

" The office is provided with attached SPMs quarters but the SPM is not occupying the quarter. Bldgs branch may please examine the feasibility of dequarterising by surrendering the quarters portion. SPM pointed out that the annual maintenance of the building has not been carried out by the land lord and he is reluctant to do the maintenance for the building when asked for. Following repairs/maintenance are required for the buildings:-

1. Arresting of leakage (Record Room)
2. Closing of a wicket gate provided on the northern compound wall with bricks (gate damaged and kept open)
3. The main gate of the building is too small to enter for a two wheeler at least. This has to be replaced with a bigger gate.
4. White washing and painting
5. The septic tank of the building is overflowing
6. No drinking water available in the well. "



2. When the applicant took charge as the Sub postmaster of the post office on 31-10-2008, immediately thereafter, i.e. on 03-11-2008 he had written a letter to the Senior Superintendent of Post Offices, Thrissur Division, which reads as under:-

I have taken charge as the Postmaster in the Kundaliyur PO, on 31-10-2008 afternoon. The septic tank of the quarters' portion of the Post office is leaking to the well. Hence the water in the well is unusable. There is a bad smell during rainy season. Both office and quarters portion is leaking during rainy season. The plastering of the ceiling is also coming off. Hence the office may be shifted from this premise to some other premises.

3. The applicant was drawing house rent allowance as he was not utilizing the aforesaid quarters attached to the post office. The respondents, by communication dated 05-02-2010 (Annexure A-1) demanded refund of the same (which was indicated as Rs 36,418) and the applicant vide communication dated nil, had inter alia stated as under:-

I joined as SPM Kundaliyur in the A/N of 31-10-2008 as the then SPM Sri E.F. Simon retired on superannuation that day. The quarters portion of the office was in a dilapidated condition. Drinking water was not available in the compound. These matters were clearly mentioned in paragraph 12 of IR ASP(South) Sub Dvn Thrissur on Kundaliyur.

As quarters are not fit from residing my predecessor was not residing in the quarters. My self too was unable to reside in the quarters with family. I had informed your office about this by my letter dated 03-11-2008 (Copy enclosed). I was paid HRA regularly from November 2008 onwards. Now vide letter under reference PM Thrissur has asked me to repay an amount of Rs 36418 as over payment.

This is highly irregular and injustice, the quarters are not in a position to reside nor there is any drinking water. Due to this I had never resided in the quarters. I was paid HRA without my request.

4. A burglary occurred on the night of 16/17-01-2010 in the Post Office and the burglars were found to have gained entry into the post office through the quarters portion. The burglary resulted in a loss of Government money to the tune of Rs 1,57,469.95.

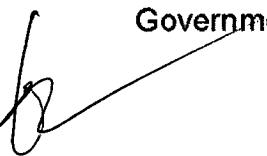
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5. Respondents have, vide Annexure A-2 order dated 22-02-2010 demanded the above loss from the applicant on the justification that on investigation it was revealed that the applicant as SPM was not occupying the attached quarters and that had he been occupying the quarters, burglary would not have occurred and loss of government money could have been prevented. Thus, the negligence on the part of the applicant resulted in the afore said loss.

6. Against the aforesaid Annexure A-1 and A-2 orders, the applicant has filed this OA seeking the following reliefs:-

- (i) To call for the records leading to Annexure A-1 to A-5 and to quash A-1 and A-2.
- (ii) To declare that the applicant is entitled to HRA and all other allowances deeming that the uninhabitable quarters is de-quaterised from the post of SPM Kundaliyur with effect from 2007.
- (iii) To declare that the applicant is not liable to pay any amount which was burglarised from the office due to lapse in security.

7. Respondents have contested the O.A. They contend that as per Rule 37 of Postal Manual (Volume VI, Part I), vide Annexure R-1, the Postmaster is required to reside in the attached Post Office quarters where such quarters are provided to him. The applicant has committed a grave misconduct by his own admission that he was not residing in the attached Post Office Quarters since his assuming charge as Sub Postmaster, Kundaliyur. The Post Office was neither dequaterised nor was any permission given to him to stay outside the quarters. As such, he was duty bound to reside in the Post Office quarters on his taking charge of the Sub Office. The non occupation of quarters by the applicant made it easy for burglars to enter Post Office Premises which resulted in substantial loss of Government money to the tune of Rs 1,57,469.95. As such, the applicant was



identified as subsidiary offender and was directed to credit the amount lost in burglary vide Annexure A-2. As regards drawal of HRA, the respondents contended that officials who are provided with quarters are not entitled to HRA and the same should not be drawn and paid to them. The applicant's predecessor was not paid any HRA during his tenure as Sub Postmaster at Kundaliyur. The applicant was also not entitled to be paid any HRA. But HRA was irregularly drawn and paid to him from November, 2008 to December 2009 which remained unnoticed till the occurrence of burglary. Under these circumstances Annexure A-1 was issued, which according to the respondents is in tune with the provisions contained in the relevant rules, vide Annexure R-4. The reasons for erroneous payment of HRA to the applicant had been given in Annexure R-2.

8. Respondents have further contended that by his own admission the applicant has not slept at the Post Office Quarters which resulted in substantial loss of money. Vide Annexure R-3, Rule 204 of Postal Manual Volume III further lays down that where owing to the negligence of Department employee or through the omission on his part to observe any Rule as provided in the different Volumes of the Postal Manual or other books like the PO Guide, the Department is put to a loss of government money or property , any member of the staff who by his negligence, default or disregard of the rules has caused the loss or has contributed to its occurrence either by reason of the enquiry being impeded or frustrated, may be required to make good the loss either in whole or part as the competent authority may decide provided there is a clear finding that the Departmental employee is held responsible for a particular act of negligence and the breach of rules has caused the loss or contributed to the occurrence. Respondents have also annexed Annexure R-7 statement of the applicant recorded on 20-01-2010 immediately after the burglary had taken place, wherein the applicant has given the reason for

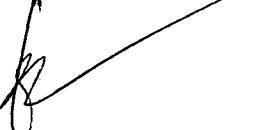


keeping the money in the post office instead of remitting the same to the Head Post office.

9. Counsel for the applicant argued that the quarters could be habited only when it is provided with the basic necessities. When the septic tank water percolates in to the well, there is absolutely no possibility of residing in the quarters as there is no facility for drinking water. Again, it is not that the applicant alone was not residing in the quarters. He had taken over as Sub Post Master only on 31-10-2008, whereas, his predecessors had also not been residing in the quarters. As early as in March 2007, the Asst. Superintendent of Post Offices conducted the annual inspection of the post office and recommended for dequarterising the said quarters. No action was taken thereon. When the applicant had taken over, within three days he had written to the Senior Superintendent of Post office about the poor condition of the quarters. No action was taken. Without his claim for HRA, he had been paid the HRA by the accounts department. Thus the applicant genuinely believed that he is entitled to drawal of HRA when he was not occupying the quarters. The government cannot compel him to reside in a quarters which is unworthy of residence, and which suffers from non availability of basic amenities. The counsel also took serious objection to the applicant being branded as "subsidiary offender", vide para 3 of the reply, which term is totally unwarranted.

10. Counsel for the respondents submitted that no permission to stay away from the Quarters was requested for by the applicant and thus, his non residing/sleeping in the post office premises is in violation of the relevant rules as cited in the reply.

11. Arguments were heard and documents perused. Admittedly, the



quarters remain uninhabited since prior to March 2007 and the extent of repairs had been itemized in the inspection report vide para 12 of Annexure 3. No action has been taken on the letter dated 03-11-2008 submitted by the applicant, vide Annexure A-4. The fact that the septic tank water oozes into the well as given in Annexure A-4 letter has not been denied by the respondents. In one phrase, the quarters attached to the sub post office, Kundaliyur continued to be "absolutely unworthy of occupation". When even the basic necessities have not been provided in the accommodation, such as drinking water, and when the septic tank water and the well water get mixed up, which is bound to cause calamitous health hazard, it is cruel and inhuman to expect a person to live therein. That the Post Office was neither dequartered nor was any permission given to the applicant to stay outside the quarters cannot be taken as a justifiable ground to penalize the applicant. When the inspection report is specific about the dilapidated condition of the accommodation, it was for the respondents to have taken prompt action for dequarterising. And, since the said quarters was not under occupation even by the predecessors, due to such dilapidated condition, when the applicant was posted to the said post office, it should be deemed that there is no attached quarters to the said post office and that no rent free accommodation had been provided to the applicant during his tenure as the sub-postmaster, Kundaliyur. Further, the HRA paid to the applicant was not at the request of the applicant. The justification given by the authority in the account department is hardly convincing. Branding the applicant as "subsidiary offender" is again uncalled for. 'Offence' or 'offender' is a terminology in the Criminal law and Service law does not provide for any punishment for such offences. Service law merely speaks of imposing certain penalties upon public servants for good and sufficient reasons. The rule does not mention any particular offence and obviously can create none. (See S.A. Venkataraman vs Union of India, 1954 SCR 1150). The anguish expressed by



the counsel for the applicant in this regard is fully justified.

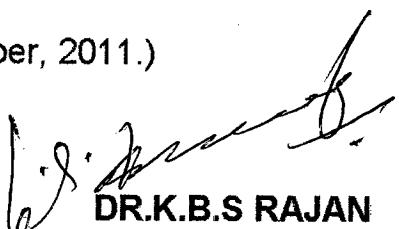
12. This case is a classic example of how the department tries to encash its own mistake, while the Apex Court has held one should not be permitted to take advantage of one's own mistake. See *A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust*, (2010) 1 SCC 287, wherein the Apex Court observed, "in our view, the appellants having failed to do so, they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents." and also *Rekha Mukherjee v. Ashis Kumar Das*, (2005) 3 SCC 427, wherein the Apex Court has stated, "36. The respondents herein cannot take advantage of their own mistake."

13. In view of the above, the OA succeeds. It is declared that the applicant cannot be made responsible for the loss caused to the Government due to the burglary that took place in the Sub Post Office, Kundaliyur in January, 2010. Hence he cannot be mulcted with the recovery of the loss so caused, nor can he be directed to refund the HRA received, as he was not in occupation of the accommodation. Annexure A-1 and A-2 are quashed and set aside.

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

(Dated, this the ⁰⁴^H day of November, 2011.)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


DR.K.B.S RAJAN
JUDICIAL MEMBER

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