

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 157/10

This, the 22nd day of November, 2013.

HON'BLE SHRI NAVNEET KUMAR MEMBER (J)

Pooja Agarwal, aged about 27 years, D/o Shri A. K. Agarwal, resident of D-3, Setor-K Lucknow.

Applicant

By Advocate Sri Praveen Kumar.

Versus

1. Union of India through the Director General Council of Scientific & Industrial Research, New Delhi.
2. The Director, National Botanical Research Institute, Rana Pratap Marg Lucknow.
3. The controller of Administration, National Botanical Research Institute, Rana Pratap Marg, Lucknow.

Respondents

By Advocate Sri Pankaj Awasthi for Sri A. K. Chaturvedi.

**(Reserved on 22.10.2013)
ORDER**

By Hon'ble Sri Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

1. To release the arrears of HRA as indicated in para 4.15 of the OA along with interest @ 12% O.A while quashing the impugned order dated 5.3.2010 contained as Annexure A-1A.
2. Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
3. Cost of the present case."

2. The brief facts of the case are that the applicant was initially engaged as Scientist 'Fellow' under the Scheme for Quick Recruitment of Scientists for Major Project vide order dated 20.6.2006 and she was engaged on payment of consolidated emoluments of Rs. 9000/- PM. In terms of the appointment order dated 20.6.2006, the applicant was entitled for hostel accommodation/ Scientist Apartment if available on payment of rent at the rate of 5% of the emoluments as fixed failing which, she will be paid the HRA as per CSIR Rules on the basis of emoluments. In pursuance of the said appointment order, the applicant asked for providing accommodation. But when respondents have not taken any decision on the applicant's request for allotment of accommodation, she requested for disbursement of the salary as she was not paid salary for two months despite working satisfactorily. Subsequently, the applicant again made a representation as her term was going to expire on 26.2.2002. Before expiry

of her term, by means of an order dated 28.6.2008 the term of the applicant was again extended for a period of one year till 25.6.2008. Till the extended period of time, the applicant was not allotted accommodation despite her repeated request. Apart from this, the applicant was also not paid HRA. When the applicant was neither allotted nor she was paid HRA, she preferred the O.A. 500 of 2009. The said O.A. was decided with a direction to the respondents to consider and decide the representation of the applicant and finally the respondents passed an order dated 5.3.2010 rejecting the claim of the applicant stating therein that since the applicant has never applied for hostel accommodation/ Scientist Apartment nor the same was refused by the institute therefore, the applicant is not entitled for payment of HRA for the period from 26.6.2006 to 25.2.2008. As such, the representation of the applicant was rejected. Feeling aggrieved by the said order, the applicant preferred the present O.A.

2. Learned counsel appearing on behalf of the respondents filed their reply and through reply, it is pointed out by the learned counsel for the respondents that in pursuance of the advertisement, the applicant was appointed and as per clause-7 of the term and condition of the appointment order, it is mentioned that the applicant will be provided hostel accommodation/ Scientist apartment if available on the payment of rent @ 5% of the emoluments as fixed, failing which she will be paid HRA as per CSIR Rules on the basis of emoluments fixed above. It is also pointed out by the learned counsel for the respondents that the applicant did not apply for hostel accommodation/scientist apartment, as such, neither it was provide to the applicant nor any order of refusal was issued by the institute. As such, the consolidate emoluments @ 9000/- per month from 26.6.2006 to 25.6.2007 and stipend @ Rs. 9450/- per month from 26.6.2007 to 27.02.2008 and from 28.2.2008 to 25.6.2008 @ Rs. 14,700/- per month, was paid in pursuance of the Office Memorandum dated 28.7.2008. The contention of the learned counsel for the respondents is that since the applicant has not submitted any application for payment of HRA as per terms and conditions nor any such application is available on record as such, the applicant is not entitled for any HRA.

3. Learned counsel appearing on behalf of the applicant has filed their rejoinder and through rejoinder, mostly the averments made in the O.A. are reiterated. Apart from this, it is vehemently submitted by the learned counsel

for the applicant that the applicant applied for providing her accommodation, but the same was neither rejected nor accommodation is given and the applicant was also not paid the HRA for not allotting the accommodation to the applicant. The learned counsel for the applicant has also submitted that the Council of Scientific and Industrial Research Rules were issued in May 1996 and under the heading of Applicability of conduct and other rules it is provided as under:-

"The Scientists recruited under the new scheme will be subject to the operation of the CCS(Conduct) Rules, 1964 and CCS(CCA) Rules, 1965, as made applicable to other employee of the CSIR and subject to other Rules and Regulations of the CSIR in force."

4. Learned counsel appearing on behalf of the respondents filed supplementary counter reply in pursuance of the direction issued by the Tribunal dated 3.4.2013 and through supplementary affidavit, the learned counsel for the respondents has annexed the Rules and Regulations and Bye-Laws of Council of Scientific and Industrial Research, New Delhi are annexed and as well as also annexed CSIR (Residence Allotment) Rules 1997 and it is also pointed out by the learned counsel for the respondents that as per Rule 4.2, the provision of Application for Allotment is provided.

5. Heard the learned counsel for the parties and perused the record.

6. Admittedly, the respondents issued an advertisement and in pursuance of the said advertisement, the applicant applied for Scientist 'Fellow' and after the interview, the respondents issued the engagement order of the applicant on 20th June 2006 and in pursuance thereof, the applicant joined the respondents organization. The applicant continued for a period of one year and subsequently, it was extended for another period of one year up to 25.6.2008. As per clause 7 of the appointment order, it is provided as under:-

"You will be provided hostel accommodation/scientist apartment (if available) on the payment of rent @5% of the emoluments as fixed, failing which you will be paid HRA as per CSIR Rules on the basis of emoluments fixed above."

As per this, the applicant is entitled to get the hostel accommodation/scientist apartment if available on the payment of rent @ 5% of the emoluments as fixed, failing which she would be entitled to HRA as per CSIR Rules. As submitted by the applicant that she applied for the hostel accommodation, but the respondents have not provided accommodation to the applicant and when no HRA was paid, the applicant preferred O.A. and the representation of the applicant was decided in pursuance of the direction given

by the Tribunal. While deciding the representation, the respondents have categorically pointed out that the applicant did not applied for hostel accommodation/scientist apartment on the payment of particular amount of rent. As such, the applicant is not entitled for the HRA. While supporting the supplementary affidavit, the learned counsel for the respondents has relied upon and extract of the memorandum dated 9.9.1988 issued by the Directorate of Estates, Government of India with regard to those occupying/ refusing Government accommodation not eligible for House Rent Allowance. Apart from this, the learned counsel for the respondents has also filed the extract of CSIR (Residence Allotment) Rules 1997 and also relied upon Para 4.2 of the said rules which deals with application for allotment. The said para 4.2.1 and 4.2.2 of the Rules reads as under:-

4.2.1 *"An employee seeking allotment of residence shall apply for the same in the prescribed form and in such manner and within such date as may be prescribed by the Head of the Laboratory/Institute for JS (Admn.), as the case may be."*

4.2.2 *"The applications received by the prescribed date shall be scrutinized to determine eligibility of the applicants for inclusion of their names in the priority list. For each type of residence separate priority list shall be drawn on the basis of the priority date of the applicants as on the first day of the Allotment Year. The priority lists so drawn and certified by the Allotment Committee shall be displayed at appropriate places in the Laboratory/Institute/CSIR Hqrs."*

7. Learned counsel appearing on behalf of the respondents also taken a ground that those Government Servants who are entitled for Government Accommodation, the allowances will be admissible if they have applied for such accommodation in accordance with prescribed procedure, if any, but have not been provided with it. In the instance case, it is vehemently argued by the learned counsel for the respondents that since the applicant has not applied for grant of any accommodation, as such, she is not entitled for the HRA. The learned counsel for the applicant has taken a ground of clause-7 of the appointment order which clearly provides that the hostel accommodation/scientist apartment would be made available on the payment of rent @ 5% of the emoluments as fixed failing which she will be paid HRA as per CSIR Rules. The CSIR (Residence Allotment) Rules 1997 does not show anything in regard to when no accommodation is allotted whether the employee will be paid the HRA or not. Rule 10 of the said rules provides for non-

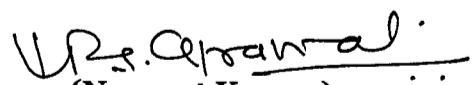
acceptance of allotment offer or failure to occupy allotted residence after acceptances. Rule 10.1 of the said Rules reads as under:-

"10.1 If an employee on receipt of an allotment order fails to accept the allotment of residence within five days or take possession within eight days of the date of acceptance of the allotment order, the allotment order shall stand cancelled and the concerned employee shall be debarred for allotment for a period of one year from the date of such cancellation."

8. It is admitted that the applicant was not allotted the official accommodation and in terms of clause- 7 of the appointment order, the applicant is liable to be get HRA as per the CSIR Rules. But in the CSIR Rules 1997, Regarding Residence Allotment, no where it has been mentioned that in case of non-allotment of an accommodation what would be the status of an employee. The Rule 4.2 of the CSIR (Residence Allotment) Rules 1997 provides for Application for Allotment and in terms of Rule 4.2.1, an employee seeking allotment of residence shall apply for the same in the prescribed manner. Now the only question remains that whether the applicant applied for allotment of any accommodation or not. In the entire Original Application, as well as in the rejoinder affidavit filed by the applicant, the applicant fail to annexed any such application which was submitted by her for allotment of hostel accommodation/Scientist Apartment and as such, there is no occasion for the respondents to issue any refusal order rejecting the claim for allotment. The clause-7 of the appointment order, issued in favour of the applicant is absolutely clear to the extent that she will be entitled for hostel accommodation/Scientist Apartment (if available) failing which she will be paid HRA as per CSIR Rules.

9. Since, no such application is on record submitted by the applicant in regard to allotment of any accommodation as such, I do not find any justified reasons to interfere in the present O.A. As such, O.A. is fit to be dismissed.

10. Accordingly, the O.A. is dismissed. No order as to costs.


(Navneet Kumar)
Member (J)