

**Central Administrative Tribunal, Lucknow Bench, Lucknow**

**Original Application No. 189/2010**

**Reserved on 5.12.2014**

**Pronounced on 24-12-2014**

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

Dr. Vimal Kumar aged about 61 years son of late B.N. Srivastava resident of 15, Shastri Nagar, Lucknow.

Applicant

By Advocate: Sri D.R. Sinha

Versus

1. Union of India, through Secretary, Ministry of Mines, Shastri Bhawan 2, Dr. Rajendra Prasad Marg, New Delhi-110011.
2. Director General, Geological Survey of India, 27, Jawahar Lal Nehru Road, Kolkatta-700016.
3. Dy. Director General (Operation, U.P. and Uttrakhand) Geological Survey of India, Sector E, Aliganj Scheme, Lucknow-226024.
4. Dy. Director General, Geological Survey of India, NE Region, Zorem Nogrim Hills, Shillong-793003.
5. Dy. Director General, GSI, Southern Region, Bonglaguda, Hyderabad-500068.

Respondents

By Advocate: Sri Rajendra Singh for Sri R. Mishra

**ORDER**

**BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)**

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

- 8.1 Issue/pass any order or direction to the opp. Parties to refund the amount due to the applicant along with the dues shown in chart contained in Annexure No. 1 with 12% interest till date of actual payment of the amount made to the applicant.
- 8.2 Allow this O.A. with any other order or direction in the interest of justice equity and fair play.
2. The present O.A. was dismissed in default by means of order dated 19.9.2014. The applicant has moved an application for recall of order which was allowed and the O.A. was restored to its original number.
3. The brief facts of the case are that the applicant joined the respondents organization in 1975. As per the provision of IVth Central Pay Commission, the facility of retention of accommodation at old station of posting was given to Central Govt. employees who were

posted in North Eastern Region. Accordingly, the applicant submitted an application for retention of accommodation as he had retained for keeping his house hold effects and other purposes at Jaipur as the applicant was transferred to Lucknow from Shillong in 2001 but his place of transfer was changed and he was asked to join at Hyderabad. In 2004, the applicant was promoted to the post of Director from the post of Senior Geologist and in 2007, a revised LPC was sent in which it is advised to deduct a sum of Rs. 76,703/- from the salary of the applicant. The applicant superannuated from service on 30.11.2008 and under protest he deposited Rs. 76,703/- so that his retiral dues may not be jeopardized. The applicant also submitted a representation but despite orders of the Tribunal, the same has not been disposed of. Apart from this, it is also argued by the learned counsel for the applicant that the respondents have not provided any opportunity of hearing to the applicant before passing of any order of recovery.

4. On behalf of the respondents, counter reply as well as first and second Supplementary counter reply is filed, through which it is indicated that as per the Govt. of India ,Ministry of Finance O.M. dated 29.3.1984 pertaining to allowances and facilities for civilian employees of the Central Govt. serving in the States and Union Territories of North Eastern Region, as a special incentive, the Central Govt. employees transferred/posted to the states of Assam, Meghalaya, Manipur, Nagaland and Tripura and Union Territories of Arunachal Pradesh, Mozoram and Andaman and Nicobar Islands is granted double HRA i.e. both at the present as well as previous place of posting. As per the said O.M. certain conditions are laid down and while the applicant transferred to Jaipur , the applicant has also preferred transfer T.A. adjustment bill for transfer from Jaipur to Shillong for self and family members and a sum of Rs. 1477/- has been recovered from his pay of August, 1987 for full adjustment against the transfer T.A. advance of Rs.11,300/- It clearly substantiate beyond any

doubt that he did not kept any family member at his previous place of posting. Apart from this, it is also indicated by the respondents that the applicant in his statement categorically stated that only house hold effects of self are kept and no body stays there. As such, the amount so paid to the applicant was recovered from the applicant.

4. On behalf of the applicant Rejoinder reply as well as Supple. Rejoinder reply to the first and second supple. Counter reply is filed through which he has reiterated the averments made in the O.A. and denied the contents of counter reply as well as contents of first and second Supple. Counter reply.

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

6. The applicant joined the respondents organization in 1975 and he was posted in Western Region at Jaipur where he remained till 1986 and in 1986, he was transferred from Jaipur to Shillong. As per the provision of 4<sup>th</sup> Central pay Commission, the Ministry of Finance issued an O.M. dated 29.3.1984 which provides that as a special incentive, the Central Govt. employees transferred/posted to the states of Assam, Meghalaya, Manipur, Nagaland and Tripura and Union Territories of Arunachal Pradesh, Mozoram and Andaman and Nicobar Islands is granted double HRA i.e. both at the present as well as previous place of posting. The said O.M. reads as under:-

(a) Central Govt. employees who were in occupation of hired private accommodation at the last station of posting before transfer to any of the States/Union Territories mentioned above may be allowed to draw house Rent Allowance admissible to them at the station.

b) Such Central Govt. Civilian employees may also be allowed to draw, in addition to (a) above House Rent Allowance at the rates admissible at the new place of posting in the aforesaid States/ union Territories in case they live in hired private accommodation.

c) The benefit mentioned in (a) and (b) above will also be admissible to Central Govt. employees who get transferred from one station of a State/Union Territory of the North Eastern Region to another State/Union Territory of the North Eastern Region mentioned above.

7. Subsequently, the Ministry of Steel and Mines, Department of Mines issued a letter dated 2.5.1990 through which certain clarifications are made. The relevant paragraph 2 and 3 are reproduced below:-

“2. It will be clear from above that the ‘basic condition’ for drawl of double HRA devolves around bonafide use of accommodation at the old station by family members.

3. As regards query as to whether double HRA can be paid when any of family members of Government servant does not reside at old location and only some luggage is kept at old station, it may be stated that the ‘test’ prescribed in the instruction is that of bona fide use by members of the family. If no member reside at old location the test of bona fide use by members of family is not satisfied. As such there is no question of payment of double HRA in such cases.”

8. The applicant has taken his family to Shillong and has also claimed the transfer allowance and submitted bill as well. The applicant has also claimed payment of HRA at old station whereas he has categorically stated that only house hold effects are kept there and no body are residing there. The respondents relied the said declaration given by the applicant in 1989. The respondents counsel has vehemently argued that applicant being educated and Gazetted officer are supposed to know the averments furnished in his declaration for drawl of double HRA on transfer. As per the Ministry of Mines clarification dated 2.5.90, it is clear that bona fide use of accommodation at the old station was for the family members and not for keeping the belongings

only. It is also to be pointed out that the payment of old station HRA was discontinued in May 1997 and the applicant was transferred to Lucknow from Shillong in 2001. But undisputedly , the applicant charged the old station HRA from 1986 till 1997.

9. As per the averments of the applicant, the applicant was not afforded any opportunity of hearing before passing any order of recovery though the applicant charged the said amount till 1997 and subsequently he retired on 30<sup>th</sup> November, 2008. Apart from this, the applicant has also given an undertaking of recovery of the said amount of Rs. 76,703/- so that his retiral dues may not be held up. He has also submitted a representation which was already directed to be disposed of by the Tribunal vide order dated 30.4.2010. Learned counsel for the applicant has categorically indicated that the said representation is still pending for disposal. Apart from this, it is also submitted by the learned counsel for the applicant that he was not afforded any opportunity of hearing before such recovery from the retiral benefits of the applicant.

10. Undoubtedly, the amount can be recovered if it is a wrong calculation on the part of the respondents and any amount excess is paid to the applicant but the applicant is entitled to have an opportunity of hearing.

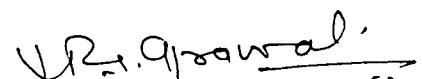
11. As observed by the Hon'ble Apex Court in the case of **State of Orissa Vs. Dr. Ms. Binapani Dei reported in 1967 Supreme Court Cases 1269** where the Hon'ble Apex Court has been pleased to observe that "***Even administrative orders which involve civil consequences have to be passed consistently with the rules of natural justice.***

12. In the case of **Davinder Singh and others Vs. State of Punjab and others reported in (2010) 13 Supreme Court Cases, 88**, the Hon'ble Apex Court has also been pleased to observe

that "**opportunity of hearing is to be given to the delinquent before passing an order.**"

13. In terms of the observations of the Hon'ble Apex Court and submissions of the parties, O.A. is disposed of with direction to the respondents to provide an opportunity of hearing to the applicant and thereafter pass an order within a period of three months from the date the certified copy of order is produced and also consider and dispose of his representation as directed by the Tribunal vide order dated 30.4.2010 in accordance with law and decision so taken, be communicated to the applicant

15. With the above observations , O.A. is disposed of. No order as to costs.

  
(NAVNEET KUMAR)  
MEMBER(J)

HLS/-