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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 774 of 1988
T.A. No.

198

DATE OF DECISION 19.01.1990.

Shri Yeshwant Anant Khatke Petitioner

Mr. D.B. Walthare Advocate for the Petitioner(s)

Versus

Union of India and others. Respondent

Mr. S.V. Gole for Mr. S.V. Natu, Advocate for the Respondent

CORAM

The Hon'ble Mr. P.S. Chaudhuri, Member(A)

The Hon'ble Mr.

- 1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
- 2. To be referred to the Reporter or not ? } No
- 3. Whether their Lordships wish to see the fair copy of the Judgement ? }
- 4. Whether it needs to be circulated to other Benches of the Tribunal ? }

(A)

(Camp at Nagpur)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

ORIGINAL APPLICATION NO.774 OF 1989.

Shri Yeshwant Anant Khatke,
R/at 77, Sahkar Nagar Nagpur
Khamla Road,
Nagpur - 440 025.

.. Applicant

V/s.

Union of India, through
The Secretary,
Ministry of Communications,
Department of Posts,
New Delhi - 110 001

And Others. .. Respondents

Coram: Hon'ble Member(A), Shri P.S.Chaudhuri

Appearances:

Mr.D.B.Walthare, learned
advocate for the applicant.

Mr.S.V.Gole, for Mr.S.V.Natu,
learned advocate for the
respondents.

JUDGMENT:

Dated: 19.1.1990.

(Per: Shri P.S.Chaudhuri, Member(A))

This application was filed on 21.10.1988 under Section 19 of the Administrative Tribunals Act, 1985. In it the applicant prays that the orders dt. 29.1.1987, 5.10.1987 and 8.1.1988 by which he is being denied House Rent Allowance (for short, HRA) and Additional HRA in lieu of rent free quarters be set aside and that he be paid his HRA claim amounting to Rs.9,275.10.

2. In view of these prayers, in terms of this Tribunal's Chairman's order dt. 21.3.1988 this application comes within the jurisdiction of a Bench consisting of a Single Member.

I have accordingly proceeded to hear and decide this application

3. The facts. The applicant joined the Postal Department on 4.3.1953 as a Postal Assistant on Kota Division in Rajasthan Circle. After working in various capacities, on

23.6.1982 when he was working as Postmaster (Gazetted) Nagpur, GPO, a Group 'B' post, he was transferred in the same grade and took over charge of the post of Senior Postmaster, Nagpur Head Office. By order dt. 4.5.1987 he was transferred as Senior Postmaster, Nagpur City. He took over charge of this post on 30.5.1987 A.N. It may be mentioned here that the applicant has his own residential accomodation at 77, Sahkar Nagar, Khamla Road, Nagpur. Prior to his last posting as Senior Postmaster, Nagpur City he had been drawing HRA and Additional HRA in lieu of free quarters for some time. It is the applicant's case that while assuming charge of the post of Senior Postmaster, Nagpur City he was not allotted any residential quarter and no occupation orders were issued and so he is entitled to HRA and Additional HRA in lieu of free quarters. It is his grievance that these allowances are not being paid to him. On 2.6.1987 he submitted two representations to the Postmaster General, Maharashtra Circle, Bombay. In one he said:

"I have taken over charge as Senior Postmaster Nagpur City H.O. on 30.5.1987 A/N. I have not occupied the Postmaster's quarter it being substandard. The Gazetted Officers are entitled for type 'D' quarters. The existing Quarter consists of only one living room of a size 10' x 16' and one bed room of 10' x 11' in addition to a small kitchen and lavatory as 'C' type quarter but the room appears to be of 'B' type quarter.

I therefore request your honour to kindly suspend the quarter and oblige. My predecessors also did not occupay it on the same grounds."

In the other he said:

"I am not interested in cooupaton of quarter since I have got my own house at Nagpur and if I rent it out I will not be able to got it back when I reitre as superannuation on 30.6.1988.

The quarter is also too small to accomodate my family.

It is learnt that Sr. Supdt. of Post Offices Nagpur City Dn. has already taken up a proposal to accomodate the office of the AO(ICO) Nagpur which is in a rented building. My duty is between 10 to 18 Hrs. and thus I am not required to live on the Govt. premises for the proper discharge of duties.

PRAYER

I therefore pray that the quarter of the Sr. Postmaster Nagpur City may kindly be suspended at the hands of the appropriate authority from 30.5.87 and the admissible HRA paid to me."

As he did not receive any reply, he issued reminders.

By one of the impugned orders dt. 5.10.1987, the Postmaster General, Bombay sent a reply which was communicated to the applicant on 14.10.1987. There was some confusion in this reply inasmuch as it pertained to the residential accomodation of the Senior Postmaster, Nagpur GPO and not the Senior Postmaster, Nagpur City. The applicant pointed out this discrepancy in a representation dt. 17.10.1987. In the meantime, he had submitted a further representation on 16.10.87 which, too, he followed up with reminders. By another of the impugned orders dt. 8.1.1988, which was communicated to the applicant on 11.3.1988, he was informed that the decision taken in Shri M.Z.Khan, Superintendent of Post Offices, Buldana's case on 8.9.1987 would be applicable to him also. This decision was that "your request to pay the HRA for non-occupation of rent free quarter cannot be accepted as your non-occupation of quarters on grounds of quarter being substandard is untenable." The applicant, had, in the meantime, submitted a representation dt. 4.2.1988 to the Member, Personal Postal Services Board, New Delhi. No reply to this representation appears on the record. The applicant then filed this application on 21.10.1988.

4. The respondents have opposed the application by filing their written statement. I also heard Mr.D.B.Walthare, learned advocate for the applicant and Mr.S.V.Gole, holding the brief of Mr.S.V.Natu, learned advocate for the respondents. The relevant manuals of the Postal Department were also produced before me.

5. The applicant's first submission is that the residential accomodation in Nagpur City Post Office which he is being asked to occupy is inconveniently located and is sub-standard. The quarter is on the fourth floor of the building. There are two quarters for Group 'D' staff in the same area. It has an area of only 654 sq.ft. as against the area 660 sq.ft. along with a open courtyard of 1,259½ sq.ft. that is prescribed for a Sub-Postmaster of a small post office where the Sub-Postmaster is Assisted by a Clerk or Signaller. It is the applicant's contention that being a Group 'B' gazetted officer he is entitled to type 'D' quarters. These contentions were opposed by the respondents. They submitted that the two quarters meant for Group 'D' staff are separate and their non-occupation does not debar or preclude the applicant from occupying his quarter. It is the respondents submission that there is no standard prescribed for the Postmaster's quarter in Head Post Office Buildings. In view of this position, I do not see any merit in this submission of the applicant.

6. The applicant's next submission was that being a gazetted officer it was not necessary for him to reside on the premises in view of the duty hours of the Post Office. No authority has been quoted in support of this proposition. The respondents have opposed it by submitting that no such exemption has been ordered. In view of this position, I do not see any

merit in this submission of the applicant.

7. The applicant's third contention was that no orders for occupation of the quarters had been issued to him by the respondents. The respondents countered this by submitting that no such orders were required to be issued and the applicant ought to have occupied the quarter from the date that he took over the charge of his post. I see considerable merit in this submission of the respondents. In his application dt. 2.6.1987 to the Postmaster General, Bombay, which was written immediately after the applicant took over charge as Senior Postmaster, Nagpur City on 30.5.1987 A.N., he stated that the Senior Superintendent of Post Offices, Nagpur City Division, Nagpur had ordered him to occupy the quarter. He did not make any grievance about not having received any allotment order. His only request was for suspension of the allotment of the residence to the holder of the post. In view of this position, I do not see any merit in the applicant's submission.

8. The applicant's fourth contention was that the Audit Department had taken up the question of the quarters at Nagpur City Post Office as being sub-standard. I do not see how this can help the applicant. The comments of the Audit Department are not mandatory instructions. The respondents submitted that in the building plan of Nagpur City Post Office specific provision had been made for a residence for the Postmaster. It was their submission that there is no standard prescribed for such a quarter. In view of this position, I do not see any merit in the applicant's submission.

9. The applicant's final submission was that the competent authority was required to suspend this allotment of a residence to the post of Senior Postmaster, Nagpur City

in terms of SR 311 and 313. A plain reading of these rules makes it clear that there is no such compulsion.

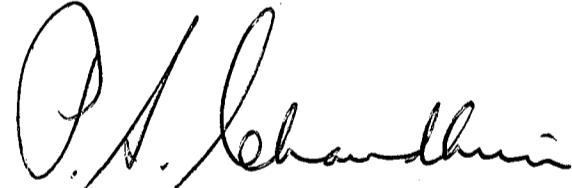
10. Mr. Walthare cited some cases which he said support his contentions. The first was R.C.Srivastava's case, (1988) ATLT (CAT) 132, decided by the Delhi Bench. But the facts of that case are not on all fours with the present one. In that case, the General Manager had communicated that the accommodation meant for the Deputy Chief Signal and Telecommunication Engineer, Northern Railway, Ghaziabad was either to be allotted to him or released for the Housing Committee, Ghaziabad. In that case it was held by the Delhi Bench that without allotment the applicant could not have occupied the Ghaziabad house. There is no such choice between two alternatives in the present case. The quarter at the Nagpur City Post Office was meant for the Postmaster only and non else.

11. The second was M.F.Karim's case, (1988) ATLT (CAT) 204, decided by the Bangalore Bench. But the facts in that case are quite different to those in the present case. In that case it was found that "The rules made by the President under the priviso to Article 309 of the Constitution do not specifically regulate compulsory occupation of Government quarters and they are silent on the point. There is a yawning gap on the point." It was held that it is now well settled that a yawning gap on a point can be filled up or removed by Government. It was also held that there was no merit in the challenge of the applicant to the orders compelling him to reside at Government quarters near the work-spot. The position is much more difficult for the applicant in the present case in which it is not disputed that there is a specific provision regarding post-linked quarters for Postmasters.

12. The third was M. Purushothaman's case, (1988) ATLT (CAT) 326, decided by the Madras Bench. But the factual situation in that case led to the question "can a civil servant be denied HRA on the ground that he has failed to occupy the quarters allotted to him, which allotment is made without an application from him? In other words, can Government unilaterally force a civil servant to occupy Government quarters, and in case of refusal forfeit the HRA?" Postmasters are entitled to rent free quarters and are required to live on the premises in the exigencies of service. In order to meet this requirement, the Postal Department constructs post-lined quarters for Postmasters when constructing Post Offices. Specific rules, viz. SR 313 have been framed regarding suspension of allotment of such quarters. This case too does not, therefore, help the applicant.

13. In this view of the matter, the application deserves to be dismissed.

14. The application is dismissed with no order as to costs.


(P.S. CHAUDHURI)
MEMBER(A)

jk/-

Judgement dt 19.1.90
Served on Applicnt
R. No. 1103 on dt
2.4.90 & 3.4.90

By
244190