

## CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 698 OF 2005[Patna, this Tuesday, the 4<sup>th</sup> Day of January, 2011]C O R A M

HON'BLE MR. JUSTICE ANWAR AHMAD, MEMBER [JUDL.]

HON'BLE MR. A.K.JAIN, MEMBER [ADMN.]

Lallan Baitha, son of Shri Ram Suraj Rajak, Helper, Office of the Director, Small Industries Service Institute, Under Ministry Small Scale Industries, Gaushala Road, P.O.: Ramna, Distt.: Muzaffarpur, Resident of Village – Sujaon, PO – Pachalakhi, PS – Nauta, District – Siwan [Bihar].

.....APPLICANT.

By Advocate :- Shri M.P.Dixit.  
Shri S.K.Dixit.

Vs.

1. The Union of India through the Secretary, Ministry of Industry, Govt. of India, Nirman Bhavan, New Delhi.

2. The Development Commissioner [Small Scale Industry Office] Development Organisation, 7<sup>th</sup> floor, Nirman Bhavan, New Delhi.

3. The Director, Small Scale Industries, Small Industries Service Institute, Gaushala Road, PO- Ramna, Distt – Muzaffarpur.

4. The Deputy Director [Mechanical], Office of the Director, Small Scale Industries, Small Industries Service Institute, Gaushala Road, PO – Ramna, Distt – Muzaffarpur.

5. The Assistant Director, Office of the Director, Small Scale Industries, Small Industries Service Institute, Gaushala Road, PO – Ramna, Distt – Muzaffarpur.

6. The Accounts Officer, Account Section, Office of the Director, Small Scale Industries, Small Industries Service Institute, Gaushala Road, PO – Ramna, Distt – Muzaffarpur.

.....RESPONDENTS.

By Advocate :- Shri M.D.Dwivedi, ASC.

O R D E R

Justice Anwar Ahmad,M[J] :- This OA has been filed by the applicant, Lallan Baitha, for the following reliefs :-



*"8[I] That your lordships may graciously be pleased to quash and set aside the impugned order of recoveries dated 04.10.2005 as contained in Annexure-A/8.*

*[II] That respondents be directed to refund the amount, if any recovered on the basis of the impugned order dated 04.10.2005 [Annexure-A/8] together with interest.*

*[III] That the respondents be further directed to make payment of H.R.A from the month of August, 2005 till date together with interest.*

*[IV] That any other relief or reliefs including cost be allowed in favour of the applicant."*

2. The applicant is a permanent Group 'D' employee working as Helper under the respondents. He belongs to Scheduled Caste category. He was initially engaged on 14.04.1986 as casual labourer. He was granted temporary status of Group 'C' category from 01.12.1993 [Annexure-1]. He was appointed as Helper on temporary basis, on probation of two year w.e.f 17.10.1997 vide Annexure-3. Thereafter, he was made regular on that post.

2. Learned counsel for the applicant submits that the applicant was surprised to get less salary in the month of August, 2005. He made a representation and thereafter submitted reminder. He received an order dated 04.10.2005 [Annexure-8] with the statement of recoveries whereby the payment of House Rent Allowance [for short, HRA] was stopped from August, 2005, and further, HRA paid from 15.07.1994 to 31.07.2005, and transport allowance from 18.10.1997 to 31.07.2005, amounting to Rs.30.407/-, was ordered to be refunded in one installment otherwise the said amount to be recovered from his salary. The reason of the aforesaid order was disclosed that the applicant, along with the family members, was residing in the government quarter allotted to his father, Ram Suraj Razak, a Watchman,



w.e.f. 15.07.1994. Learned counsel contended that the applicant was not living with his father in the quarter allotted to his father and, on the contrary, he was living in a rented house. So, he submits that the impugned order is illegal and fit to be set-aside. He further submits that the reliefs prayed for be allowed.

3. Learned counsel for the respondents, on the other hand, submits that the applicant was getting HRA and transport allowance as he had stated that he was living in a rented house. He submits that it came to the knowledge of the authority that the applicant, along with his children, was residing in the campus itself in the quarter allotted to his father, a Watchman. The matter was inquired into. He submits that at the time of regularisation the applicant submitted attestation form in his own hand-writing and under his signature [placed on record]. In column no.4 of the attestation form the applicant has disclosed his residential address, SISI, Gaushala Road, PO- Ramna, Muzaffarpur, living from 1986, till date. So, it is evident that his residential address is the office campus in which there is one quarter allotted to his father, a Chowkidar. So, he submits that it stands proved beyond doubt that the applicant has been living in the official quarter allotted to his father. He submits that the applicant was asked to produce his residential proof, along with rent receipt. He disclosed his residential address and filed two rent receipts which were found not true. He submits that in proof of residence the applicant should have filed gas connection, ration card, electric bill, etc. but these documents were not produced. Learned counsel, above all, submits that a three members Committee was constituted to make inquiry into the matter and submit the report. He submits that the Committee came to a finding that



the applicant was living with his father in the quarter allotted to his father. He submits that the applicant is, therefore, not entitled to get HRA in terms of Rule 5 [c][ii] of F.R.S.R. Part-V which provides that a government servant shall not be entitled to house rent allowance "if he/she resides in accommodation allotted to his/her parents/son/daughter by the Central Government....." He further submits that a person who resides within a distance of one kilometer or within the campus housing the places of work and residence will not be entitled to get transport allowance and hence, the applicant, who was residing in the quarter allotted to his father which is situated in the campus itself, was not entitled to the transport allowance. He, therefore, submits that the impugned order was rightly passed and the OA be dismissed.

4. Learned counsel for the applicant, in reply, submits that the applicant was appointed on 14.04.1986 as casual labourer and his father was allotted quarter in the office campus under order dated 03/05.08.1994 [Annexure-M/1] and hence, there is no question of residing there from the year 1986. He submits that the address given in the attestation form is only for the purpose of correspondence and hence, on this basis no adverse inference be drawn.

5. Learned counsel for the applicant further submits that the report of three members Committee is not specific and certain that the applicant was residing in that quarter in the campus allotted to his father. He further submits that on the address of the land lord furnished by the applicant, a notice was sent to the landlord but the same was returned unserved and on this score

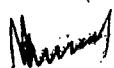


adverse inference was drawn by the respondents. He submits that when the applicant came to know of this fact, he explained the matter and thereafter notice was again issued by the respondents to the landlord on the correct name and thereafter the report of the landlord was received that the applicant was residing in the house on rent. He, therefore, submits that the relief prayed for by the applicant be allowed.

6. The respondents had constituted a Three Members Committee to inquire into the matter and submit the report. The Committee after inquiry submitted the report dated 10.08.2005 [Annexure-R/9]. The report shows that the three children of the applicant live in the quarter of their grandfather and from there they go to school. It also shows that the applicant is living in another place, the address thereof has been furnished. From the perusal of the report it is evident that the applicant is not living in the quarter of his father and, on the contrary, he is living in a rented house. The report, therefore, does not support the case of the respondents, rather it supports the case of the applicant.

7. Considering the rival submissions made and the report of the Three Members Committee [Annexure-R/9], we are of the view that the respondents have failed to substantiate that the applicant was living with his father in the quarter allotted to his father in the campus itself.

8. In the result, the OA is allowed and the impugned order is quashed with the direction to the respondents to stop recovery of HRA and transport allowance, and refund the amount of recovery, if any, already made within three months from the date of receipt/communication of a copy of this



order.

In the facts and circumstances of the case, prayer of the applicant for grant of interest is not allowed. There shall be no order as to costs.



[A.K.Jain]/M[A]



[Anwar Ahmad]/M[J]

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