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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

OA No. 216/98

Date of order: 28.01.1999

S.N.Goswami S/o Shri S.S.Goswami by caste Brahmin, aged about 39 years, resident of 182-B, Adarsh Nagar, Ajmer, working as Assistant Ore Dressing Officer, Indian Bureau of Mines, Ajmer.

.. Applicant

Versus

1. The Union of India through the Secretary, Ministry of Mines, Deptt. of Indian Bureau of Mines, New Delhi.
2. The Controller General, Indian Bureau of Mines, Nagpur.
3. The Head of Office, Indian Bureau of Mines, Ajmer
4. The Authorised Officer, Indian Bureau of Mines, Ajmer.

.. Respondents

Mr. Yogesh Gupta, counsel for the applicant.

Mr. Rohitashwa Kajla, Counsel for the respondents

CORAM:

Hon'ble Mr. Ratan Prakash, Judicial Member

ORDER

Per Hon'ble Mr. Ratan Prakash, Judicial Member

Applicant herein Shri S.N.Goswami has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 to seek a direction against the respondents not to compel him to get the No Accommodation Certificate (NAC) for availability of Govt. accommodation and to set aside and quash the order dated 19.5.1998 (Ann.Al) with a further direction against the respondents to allow him to receive the House Rent Allowance (HRA).

2. Facts which are not in dispute in brief are that the applicant was allotted a Govt. accommodation in August, 1990 wherein he resided

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upto 31.12.1995. He sought permission from the respondent Department to purchase a plot of land for construction of house which was duly accorded and the applicant completed the house in December, 1995.

3. It is the case of the applicant that after construction of his house he sought permission to shift at his own constructed house and accordingly vide order dated 13.11.1995 (Ann.A3) he was allowed to shift and was also allowed to draw House Rent Allowance (HRA) after vacation of the Govt. accommodation.

4. It is the grievance of the applicant that since then i.e. January, 1996, he has been residing in his own constructed house and also getting the HRA as per provisions of the Rules, however, the respondents vide their circular letter dated 19.5.1998 (Ann.A1) have issued directions to the effect that the applicant should also apply to obtain a No Accommodation Certificate (NAC) and that after obtaining NAC, the HRA would be admissible otherwise not. The applicant made a representation on 9.6.1998 (Ann.A4) expressing his inability to shift in the Govt. accommodation and to leave his own residential house as at that time no Govt. accommodation of the entitled type i.e. Type-IV type was available or vacant. The applicant has also asserted that the respondents are pressing him to submit an application to get an allotment of Govt. accommodation and to obtain a NAC and have also directed the Accounts Branch of the respondent Department to deduct the HRA from his salary. Aggrieved, he has approach this Tribunal to seek the aforesaid reliefs.

5. The respondents have opposed this application by filing a written reply to which the applicant has also filed a rejoinder and after receipt of the reply to the rejoinder, the applicant have also filed an additional rejoinder.

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6. I heard the learned counsel for the parties at great length and have examined the record in great detail. The only point for determination in this application is whether the respondent Department of Indian Bureau of Mines can insist to ask the applicant to submit a No Accommodation Certificate in pursuance of their letter dated 19.5.98 as at Ann.A1 and on the applicant's failure to comply with it, to stop the HRA which is being received by him.

7. It has been vehemently argued by the learned counsel for the applicant that since he has been permitted to receive the HRA vide respondents letter dated 13.11.95 (Ann.A3); the respondents Department cannot deny him now payment of HRA on the basis of the impugned letter dated 19.5.1998 (Ann.A1). It has also been urged that the order dated 13.11.1995 (Ann.A3) has been issued by an Authorised Officer of the respondent Department of Indian Bureau of Mines and hence cannot now unilaterally be stopped without affording him due opportunity.

8. On the contrary, the argument of the learned counsel for the respondents has been that the decision to grant the applicant to receive HRA was purely an interim decision as the matter was under consultation with the Central Govt. Standing Counsel, Jaipur in the context of the judgment of the Tribunal in OA No. 270/92 and 8 others disposed of by a common order dated 20.2.95. It has also been argued that after the judgment of Hon'ble the Supreme Court in the case of Director Central Plantation Crops Research Institute, Kesaragod and Ors. vs. M.Purushothaman and Ors., AIR 1994 SC 2541 wherein the controversy was on the issue that when the Govt. organisation offer an accommodation to its employees, the employee is bound to accept the allotment or would stand disentitled to receive the HRA. It has, therefore, been urged that the OA has no merit and should be dismissed.

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9. I have given due thought and consideration to the able arguments advanced on behalf of both the parties and gone through the judgment of Hon'ble the Supreme Court and of this Tribunal. Though the applicant has tried to assert that the order dated 13.11.1995 (Ann.A3) permitting him to receive HRA cannot be reviewed but there is no force in this argument. In this regard a perusal of letter dated 19.5.98 issued by the Govt. of India, Ministry of Mines, Indian Bureau of Mines is relevant particularly Clauses (i), (ii), (iii) and (iv) are most relevant which are reproduced as under:

"(i) All the previous orders issued either from HQ or by any Authorised Officer granting H.R.A. to employee(s) without production of 'No Accommodation Certificate' are superseded with immediate effect.

(ii) H.R.A. shall not be granted to any employee without production of 'No Accommodation Certificate' in future.

(iii) Employees already drawing H.R.A. shall have to submit 'No Accommodation Certificate' from the Authorised Officer for continuation of their H.R.A. If they fail to do so grant of H.R.A. shall be stopped from the date of issue of this letter.

(iv) Stoppage of H.R.A. shall continue till the production of fresh 'No Accommodation Certificate'."

Sub clause (i) of para 1 of the aforesaid letter explicitly lays down that all the previous orders issued either from HQ or by any Authorised Officer granting HRA to employee(s) without production of 'No Accommodation Certificate' are superseded with immediate effect. It means that the order dated 13.11.1995 (Ann.A3) said to have been issued by an Authorised Officer of the respondent Department stood superseded as soon as the order dated 19.5.98 (Ann.A1) was issued by the Ministry of Mines, Govt. of India. Accordingly, it was incumbent upon the applicant also to comply with the directions of the respondent Department and to produce 'No Accommodation Certificate'. He having failed to submit the NAC as desired by the respondent Department cannot insist that the respondent Department cannot stop the payment of HRA to him because he had the order in his favour dated 13.11.1995. Moreover, Hon'ble

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the Supreme Court has also dealt with the argument advanced in the case of Director Central Plantation Crops Research Institute (supra) that it is only when an employee applies on its own for allotment of Govt. accommodation then only the respondent Department can stop payment of HRA after the accommodation is allotted. While dealing this particular argument and also the situation whether the Govt. organisation on its own offer a Govt. accommodation to its employees and the employee refuses to accept the accommodation, Hon'ble the Supreme Court has observed as under:

"However, that does not mean that Government or the organisation such as the appellant-organisation to which the said provisions apply cannot on their own offer accommodation to the employees. Hence the reason given by the Tribunal that it is only if the employee applies for such accommodation and he refuses to accept the same when offered that he would be disentitled to the HRA, is not correct. It must be remembered in this connection that the Government or the organisation of the kind of the appellant spends huge public funds for constructing quarters for their employees both for the convenience of the management as well as of the employees. The investment thus made in constructing and maintaining the quarters will be a waste if they are to lie unoccupied. The HRA is not a matter of right. It is in lieu of the accommodation not made available to the employees. This being the case, it follows that whenever the accommodation is offered the employees have either to accept it or to forfeit the HRA. The management cannot be saddled with double liability, viz. to construct and maintain the quarters as well as to pay the HRA."

10. In view of the aforesaid settled position of law by Hon'ble the Supreme Court, it cannot be said that the Govt. organisation which constructs Govt. accommodation at its cost and offer it to its employees and the employee in his turn refuses to accept the allotment; can still be entitled for payment of HRA.

11. In the present case the respondent Department has initially asked the applicant to furnish the 'No Accommodation Certificate' in pursuance of the order dated 19.5.1998 (Ann.A1) and has also, though after filing of this OA, vide order dated 2.7.98 (Ann.R4) offered him Govt. accommodation; yet the applicant has been insisting to receive HRA in view of the earlier order dated 13.11.1995. In view of the

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settled law and the Rule 15(2)(c) of Indian Bureau of Mines (Allotment of Residence) Rules, 1993, applicant's insistence not to obtain a No Accommodation Certificate from the respondent Department is without any substance and is rejected. However, though there is no illegality or irregularity in the issuance of the respondent Department's order dated 19.5.98; yet in the case of the applicant the respondents did not offer Govt. accommodation to him prior to the issuance of the allotment order dated 2.7.98 (Ann.R4). Accordingly, the applicant would not be entitled to receive HRA w.e.f. the date of deemed refusal of the applicant vide order dated 2.7.98 (Ann.R4) in consonance with para 3 of this allotment order read with Rule 15(2)(c) of the Indian Bureau of Mines (Allotment of Residence) Rules, 1993.

12. Consequently, the issue raised in this OA is partially answered in favour of the respondents and it is held that the respondents Department of Indian Bureau of Mines can insist its employees to submit a No Accommodation Certificate in pursuance of their letter dated 19.5.1998 (Ann.A1). However, though the applicant has failed to comply with the directions of the aforesaid letter; yet the respondent Department would not be entitled to recover the amount of HRA which has already been paid to the applicant before they offered Govt. accommodation to the applicant vide their letter of allotment dated 2.7.98 (Ann.R4).

13. The OA is disposed of accordingly with no order as to costs.



(RATAN PRAKASH)

JUDICIAL MEMBER