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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

OA No.221/98

Date of order: 28.10.1998

1. A.S.Rathore S/o Shri N.S.Rathore, aged about 50 years, resident of Plot No. 472 (II)/36 Basant Vihar Colony, Near Police Line, Ajmer, at present employed on the post of Senior Technical Assistant (Drawing) in the regional office Indian Bureau of Mines, Ajmer.

.. Applicant

Versus

1. Union of India through its Secretary, Ministry of Mines, Indian Bureau of Mines, Nagpur.
2. Chief Controller of Mines, Indian Bureau of Mines, Nagpur.
3. Head of the Office, Indian Bureau of Mines, Ajmer.

.. Respondents

Mr. Shiv Kunmar, counsel for the applicant.

Mr. Rohitash 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 A.S.Rathore is an appointee in the respondent Department of Indian Bureau of Mines and presently posted at Ajmer in the capacity of Senior Technical Assistant

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(Drawing) in the regional Office of the Indian Bureau of Mines, Ajmer. He has approached this Tribunal to seek a direction against the respondent Department to grant him House Rent Allowance (HRA) and also not to compel him for production of No Accommodation Certificate.

2. The respondents have opposed this application by filing a written counter to which no rejoinder has been filed by the applicant. The stand of the respondents is that since the applicant has to produce a 'No Accommodation Certificate', he is not entitled to claim the HRA.

3. I heard the learned counsel for the applicant and for the respondents and have examined the record made available.

4. The applicant has raised the plea of advancing him the House Building Advance etc. but the only point in controversy is whether the applicant is entitled to claim HRA i.e. House Rent Allowance under the Rules called 'Indian Bureau of Mines (Allotment of Residence) Rules, 1993' published in the Gazette of India dated March 12, 1994. Although during the arguments, it has been asserted by the respondents that the applicant was offered a departmental accommodation for allotment to the applicant yet no document supporting this contention has been filed. It has also been urged on behalf of the respondents that this application is premature as the applicant has approached the Tribunal without exhausting the remedies available under the Rules. The learned counsel for the applicant states that after issuance of the order dated 29.5.1998 as at Ann.A1, the applicant did make a representation to the respondents. However, neither there is any reference to such a representation nor any document supporting this contention has been filed. The applicant has filed this OA on 25.6.1998. This shows that the applicant may not have tendered or submitted any

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representation to the respondent Department. It is also not clear from the pleadings that the applicant is in receipt of the HRA yet it is made out that the applicant has been in receipt of the HRA earlier to the date of the impugned order dated 29.5.98 (Ann.A1). Vide order dated 29.6.98 the operation of this order dated 29.5.98 (Ann.A1) was stayed qua the applicant. It is stated by the learned counsel for the respondents that consequent upon the interim direction of this Tribunal dated 29.6.98, the HRA paid to the applicant has not been stopped and is being paid till today.

5. As has been analysed above, it is made out that the applicant has not been offered any departmental accommodation before issuance of the impugned order as at Ann.A1 dated 29.5.98. The applicant has also in his turn neither approached the authorities nor has exhausted the remedies available to him under the aforesaid Rules of Allotment of Accommodation, 1993. Rule 10 of the Indian Bureau of Mines (Allotment of Residence) Rules, 1993 reads as under:

"10. Non-acceptance of allotment offer or failure to occupy allotted residence after acceptance - Drawal of house rent allowance:

(1) If any officer fails to accept allotment of government residence, he shall not be eligible for further allotment for one year and shall be entitled to draw house rent allowance only in terms of rule 10(3).

(2) If an officer occupying a lower type of residence is allotted a residence of the type for which he is eligible under rule 5, he may on refusal of such allotment or offer of allotment be permitted to continue in the previously allotted residence on the following conditions:-

(a) Such an officer shall not be eligible for another allotment for a period of six months from the date of allotment order for the higher class of accommodation;

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(b) While retaining the existing residence he shall be charged the same licence fee which he would have had to pay under Fundamental Rules 45(a) in respect of the residence so allotted or offered or the licence fee payable in respect of the residence already in his possession whichever is higher.

(3) On the basis of applications received if Authorised Officer is not in a position to allot the entitled type of accommodation, he shall issue 'No Accommodation Certificate' on behalf of the Controller General, Indian Bureau of Mines.

On such production of 'No Accommodation Certificate' by the employee, the House Rent Allowance shall be payable to the employee with effect from the date of 'No Accommodation Certificate'."

From a perusal of this provision and also the circular dated 19.5.98, it is clear that a policy decision has been taken that HRA shall not be granted to any employee without production of 'No Accommodation Certificate' in future. By virtue of Clause (iii) of the aforesaid circular dated 19.5.98, it has further been made necessary that employees already drawing HRA shall have to submit 'No Accommodation Certificate' from the authorised officer for continuation of their HRA. If they fail to do so grant of HRA shall be stopped from the date of issue of this circular. By virtue of Clause (iv), it has further been laid down that stoppage of HRA shall continue till the production of fresh 'No Accommodation Certificate'. It is on the basis of the aforesaid provisions of the notification that it has been argued by the learned counsel for the respondents that the applicant could not be paid HRA from the date of issue of the impugned order dated 29.5.98 (Ann.A1).

6. I have given anxious thought to the matter. As the things stand, it has been found that the applicant has not been offered any departmental residential accommodation before issuance of the impugned order dated 29.5.98. The applicant would be deemed to be eligible to receive the HRA till he is offered a departmental

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residential accommodation. In the present OA, it is by virtue of the interim direction issued on 29.6.98 that the applicant has been paid the HRA by the respondent Department and this HRA is being paid to the applicant till today. It is also necessary to mention here that the applicant has also in his turn failed to exhaust the departmental remedies available to him.

7. In view of above, this OA is being disposed of with a direction to the respondents that the respondents shall not recover the HRA which has already been paid to the applicant consequent to the interim direction issued by this Tribunal on 29.6.1998. The respondents would, however, be at liberty to proceed in accordance with the aforesaid Rules i.e. Indian Bureau of Mines (Allotment of Residence) Rules, 1993 to allot departmental accommodation to the applicant if it is available with them and to act accordingly. The applicant also in his turn is directed to move the Department within 15 days to obtain the necessary 'No Accommodation Certificate' as desired by the respondents by virtue of their circular letter dated 19.5.1998.

8. The OA stands disposed of accordingly with no order as to costs. A copy each of the circular dated 19.5.1998 and the Indian Bureau of Mines (Allotment of Residence) Rules, 1993 is taken on record.



(Ratan Prakash)

Judicial Member