

30/100
5
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 348/01.....

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet..... Pg. 1..... to 4.....
2. Judgment/Order dtd. 19/7/2002 Pg. 1..... to 7..... *for destruction*
3. Judgment & Order dtd..... Received from H.C/Supreme Court
4. O.A..... Pg. 1..... to 17.....
5. E.P/M.P..... Pg. 1..... to
6. R.A/C.P..... Pg. 1..... to
7. W.S..... Pg. 1..... to 7.....
8. Rejoinder..... Pg. 1..... to
9. Reply..... Pg. 1..... to
10. Any other Papers..... Pg. 1..... to
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)
Salma
8/12/17

FORM No.4
(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:GUWAHATI.

ORDERS SHEET

Original APPLICATION NO. 348/2001

Applicant (s) Gopal Dama

Respondent(s) H.C.I. ROM

Advocate for the Applicant: Adil Ahmed

Advocate for the Respondant: C.A. S.

Notes of the Registry	Date	Order of the Tribunal
This application is in form but not in time. Condonation Petition is filed but filed vide M.P. No. <u>X</u> C.P. for Rs. 50/- deposited vide IPO/BZ No <u>76548928</u> Dated <u>28.8.2001</u>	<u>31.8.01</u>	The application is admitted. Call for the records. Returnable by 4 weeks. Issue notice as to why the interim as prayed for shall not be granted. Returnable by 3 weeks. Mr. B.C.Pathak, learned Addl. C.G.S.C. accepts notice on behalf of the respondents. In the meantime, the respondents are directed not to make any recovery exxxxxxx of HRA vide order issued under Memo No. P/V/AAO/14 dated 4.7.01 at Annexure-D till the returnable date. List on 3-10-01 for further order.
Notice prepared and sent to DAs for liaison the律 client No. 1 to 3 by Regd A/D <u>31/8/01</u>		<u>31/8/01</u> Vice-Chairman
From 3407 to 3409 6/10 5/9/01 <u>4/10/01</u>	<u>3.10.01</u>	List on 21.11.2001 to enable the respondents for filing of written statement Meanwhile the interim shall continue
Per complety. <u>4/10/01</u>		<u>5/10/01</u> Vice-Chairman
Order dtd 31/10/01 Communicated to the Parties Commr.	<u>bb</u>	

(2)

O.A. 348 of 2001

No. written statement
has been filed.

21.11.01

Two weeks time is allowed to enable the respondents for filing of written statement.

20/11/01

List the matter on 07.12.2001 for written statement and further orders.

No. written statement
has been filed.

trd

20/11/01

7.12.01

Sri B.C.Pathak, learned Addl. C.G.S.C. submits that he will file written statement shortly and wants for short adjournment. Prayer is allowed.

Vice-Chairman

List on 4.1.02 for order.

IC (Usha)

Member (J)

Member (A)

26.12.2001 4.1.02 Written statement has been filed. The applicant may file rejoinder, if any, within two weeks from today.

10/S. Submitted

List on 23.1.2002 for order.

23.1.02

No. rejoinder has
been filed.

23.1.02

At the request of Mr.B.C.Pathak, learned Addl. C.G.S.C. four weeks time is allowed for filing of written statement.

List on 27.2.02 for orders.

IC (Usha)

Member

lm

27.2.2002

None present for the applicant. Written statement has been filed. List the case for hearing on 20.3.2002 for hearing.

bb

IC (Usha)
Member

Notes of the Registry	Date	Order of the Tribunal
No rejoinder has been filed.	20.3.02	Mr.A.Ahmed learned counsel appearing on behalf of the applicant prays for adjournment on the ground that he has received the written statement only to-day. Prayer is allowed. List for hearing on 24.4.02. Meanwhile, the applicant may file rejoinder if any, within two weeks.
<i>By 23.4.02</i>	1m	<i>Usha</i> Member
	24.4.02	The learned counsel for the applicant is on accommodation till 28.4.02. List again on 8.5.2002 for hearing.
	8.5.02	<i>Usha</i> Vice-Chairman
No rejoinder has been filed.	8.5.02	Prayer has been made on behalf of Mr.B.C.Pathak learned Addl.C.G.S.C. for adjournment. Mr.A.Ahmed learned counsel for the applicant is also on accommodation. Prayer is allowed. List on 17.5.02 for hearing.
<i>By 13.6.02</i>	1m	<i>Usha</i> Vice-Chairman
	17.5.02	None is present for the applicant. List on 14.6.02 for hearing.
	1m	<i>Usha</i> Member

14.6.02

Mr. A. Ahmed learned counsel for the applicant, prays for adjournment the case to obtain necessary instructions from the applicant. Mr. B.C. Pathak, learned Addl. C.G.S.C. has no objection. Prayer is accepted. List on 12.7.02 for orders.

I C U Shrivastava
Member

lm

12.7. Heard Mr. A. Ahmed, learned Counsel for the applicant Mr. B.C. Pathak, Addl. C.G.S.C. for the respondent.

Hearing Concluded,
Judgment reserved.

12.7
M/s
A.K. Jaiswal

19.7.02

Judgment delivered in open Court.

Kept in separate sheets. Application is dismissed. No costs.

I C U Shrivastava
Member

Judgment & order dated 19.7.02
communicated to the applicant
and both the parties
Counsel for

lm

Open

16

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. /XXX/ No. 348 of 2001...
xx

DATE OF DECISION. 19.7.2002.....

Sri Gopal Lama

APPLICANT(S)

Mr. Adil Ahmed

ADVOCATE FOR THE APPLICANT(S)

VERSUS

Union of India & Others.

RESPONDENT(S)

Mr. B.C. Pathak, Addl.C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR. K. K. SHARMA, ADMINISTRATIVE MEMBER.

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ..

Judgment delivered by Hon'ble Administrative Member.

K. K. Sharma

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 348 of 2001.

Date of Order : This the 19th Day of July, 2002.

THE HON'BLE MR K. K. SHARMA, ADMINISTRATIVE MEMBER.

Sri Gopal Lama
2699, Messanger
S/o Late Jagat Bahadur
Head Quarter 51 Sub-Area
C/o 99 APO. Applicant.

By Advocate Mr. Adil Ahmed.

- Versus -

1. The Union of India
Represented by the Secretary
Ministry of Defence
New Delhi.
2. The Colonel
51 Sub-Area, O.C.T.P.S.
C/o 99 APO.
3. The Senior Area Accounts Officer
Ministry of Defence
Beaver Road, Shillong-1.
Meghalaya. Respondents.

By Mr.B.C.Pathak, Addl.C.G.S.C.

O R D E R

K.K.SHARMA (ADMN.MEMBER):

Recovery of the House Rent Allowance paid to the applicant is the subject matter of this application.

1. The applicant is working as a Messanger under the respondent No.2. He is a Group "D" employee. Prior to his appointment as Messanger, the applicant was working in Despatch section and was staying in a rented house at Panjabari, Guwhahati. It is stated that as the applicant used to work beyond stipulated hours

(C.Usha)

and due to difficulty faced by him for carrying his duty from his rented house at Panjabari the respondent No.2 allotted him Quarter No.82 Phase-II vide order No.1801/3/Est dated 26.5.1998 (Annexure - A to the O.A.). It is stated that rules and procedures were not followed in regard to allotment of quarter as Station Head Quarter is the competent authority to allot quarter. The respondent No.2 had also ordered to the concerned officials not to deduct House Rent Allowance, Water and Electricity Charge from the applicant's salaries and also instructed the applicant not to prefer any claim of over duty allowance for performing duties beyond the specified hours. Thus according to the applicant, he was paid House Rent Allowance in lieu of overtime duty done by him. The respondent No.2 by order No.P/V/AAO/14 dated 4.7.2001 (Annexure - D to the O.A.) ordered recovery of House Rent Allowance from June, 1998 to June 2001. The total amount ordered to be recovered amounted to Rs.18,477/- It is stated that one Sri Bhim Singh Thapa, Daftry was also allotted the same quarter on same conditions as the applicant and Sri Thapa resided in the quarter for ten years, but no House Rent Allowance, Water and Electricity charges were recovered from him. The applicant has stated that he is not responsible for the negligence committed by the respondent No.2 in allotment of quarter or non-deduction of H.R.A. at the relevant time. It is also stated that the applicant is not in a position to

Wushan

return the huge amount of Rs.18,477/- from his little income of salary. The applicant had also vacated the quarter allotted to him on 11.3.2001. The recovery is challenged on the ground that it is illegal, arbitrary and malafide.

2. Mr.A.Ahmed, learned counsel appearing on behalf of the applicant supported the averments made in the application and he also relied on CAT order passed on 16.7.1998 in Sri Mahadeb Gorai, Insurance Inspector & Ors- - versus - Employee's State Insurance Corporation & Ors. reported in All India Services Law Journal 1999 (Vol-II) page 90. This case relates to the recovery of H.R.A., sanctioned to the officials of Employees State Insurance Corporation posted to N.E.Region from out side N.E.Region. The Officials posted to N.E.Region from outside are entitled to retain and claim H.R.A. at the place of their previous posting and also entitled for H.R.A. admissible at the station of their posting ~~as admissible~~. Later on, the respondents found that the total H.R.A. was wrongly paid and sought to recover the same. The recovery was not upheld by order in the aforementioned O.A.. Relying on this judgment the learned counsel for the applicant argued that the recovery of H.R.A. paid to the applicant is unjustified.

3. The respondents have filed their written statement and Mr.B.C.Pathak, learned Addl.C.G.S.C. argued representing the case of the respondents.

CC Ushan

The respondents have disputed the claim made by the applicant in the application. It is disputed that the applicant used to work beyond stipulated hours. It is also disputed that the applicant was facing difficulty in carrying out his duty from his rented house at Panjabari, Guwahati. It is stated that Panjabari is in proximity to the Head Quarters at Narengi Camp. The respondents have also disputed the contention of the applicant that the same quarter as was allotted to the applicant was allotted to one Sri Bhim Singh Thapa, Daftry on the same term. The payment of H.R.A. when the applicant was occupying Govt. accommodation is contrary to the rules. The applicant has cheated the system by having Govt. accommodation and also getting H.R.A. It is stated that recovery is being made @ Rs.530/- p.m. so as to facilitate the applicant. It is also stated that the applicant was made to vacate the quarter on 11.3.2001 after the fraud was detected. The applicant is responsible for the irregularity. The applicant has to make the payment of H.R.A., which has been fraudulently drawn by him. Mr.B.C.Pathak referred to the relevant rules which is quoted below :

"4. The grant of house rent allowance shall be subject to the following conditions :-
(a)(i):- To those Government servants who are eligible for Government accommodation, the allowances will be admissible only if they have applied for such accommodation in accordance with the prescribed procedure, if any, but have not been provided with it, in places where due to availability of surplus Government accommodation, special orders are issued by the Ministry of Works and and Housing

LCW/Chawla

from time to time making it obligatory for employees concerned to obtain and furnish "no accommodation" certificate in respect of Government residential accommodation at their place of posting. In all other places no such certificate is necessary.

(b)(i) The allowance shall not be admissible to those who occupy accommodation provided by Government or those to whom accommodation has been offered by Government but who have refused it. In the latter case, the allowance will not be admissible for the period for which a Government servant is debarred from further allotment of Government accommodation under the allotment rules applicable to him.

(b)(ii) The house rent allowance drawn by a Government servant, who accepts allotment of Government accommodation, shall be stopped from the date of occupation, or from the eighth day after the date of allotment of Government accommodation, whichever is earlier. In case of refusal of allotment of Government accommodation, house rent allowance shall cease to be admissible from the date of allotment of Government accommodation. In case of surrender of Government accommodation, the house rent allowance, if otherwise admissible, will be payable from the date of such surrender."

Mr. Pathak stated that the applicant was given rent free accommodation and as such he was not entitled to H.R.A. An illegality cannot confer any right. The H.R.A. drawn by the applicant was illegal. Referring to the judgment cited by the learned counsel for the applicant Mr. A. Ahmed, Mr. Pathak submitted that the said judgment related to the payment of Double H.R.A. which is admissible to the N.E. Region in certain cases. The case referred by the learned

12

counsel for the applicant is distinguishable on facts. In their case the applicants were specifically sanctioned H.R.A., while in the case of the applicant he had been allotted Govt. accommodation and continued to draw H.R.A., which was illegal. A Govt. servant is supposed to maintain high degree of integrity at all times. It was the applicant's duty to inform the authority that H.R.A. was wrongly paid to him. Mr.Pathak justified the recovery of the H.R.A of the applicant.

4. I have carefully considered the submissions made by the learned counsel for the parties and have also perused the records. The relevant rules extracted above show that H.R.A. is admissible to those employees, who are not in Govt. accommodation. It is not disputed that the applicant was in Govt. ^{occupation of} accommodation. The claim of the applicant that H.R.A. was being paid to him in lieu of overtime duty allowance is not acceptable as the both items are of different nature. The H.R.A. cannot be paid for overtime duty allowance. There are separate rules for drawing overtime duty allowance. Even if the H.R.A. was wrongly paid to the applicant, it was his duty to bring the facts to the notice to the concerned authority and not to continue to draw the same. But the applicant accepted the same for three years.

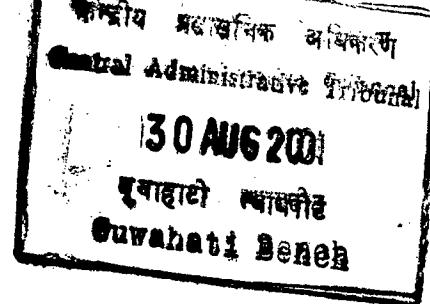
(C U Shau)

Considering all the aspects of the matter,
I do not find any merit in the application. The
application is accordingly dismissed.

There shall, however, be no order as to
costs.

K. K. Sharma
(K. K. SHARMA)
ADMINISTRATIVE MEMBER

bb



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985.)

ORIGINAL APPLICATION NO. 348 OF 2001.

Sri Gopal Lama

..Applicant.

-Versus-

Union of India & Others

.. Respondents.

I N D E X

Sl.No.	Particulars	Page No.
1.	Application	1 to 12
2.	Verification	13
3.	Annexure-A	14
4.	Annexure-B	15
5.	Annexure-C	16
6.	Annexure-D	17

Filed by
Advocate. (Abul AHMED)

Filed by
 Sri Gopal Lama applicant
 (Adm. At HABD)
 Answer to
 Shri Jagat Bahadur

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GAUHATI BENCH AT GAUHATI.

(AN APPLICATION UNDER SECTION 19 OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985.)

ORIGINAL APPLICATION NO. OF 2001.

BETWEEN

Covered by C.R.
 Sri Gopal Lama, 2699, Messanger
 S/o Late Jagat Bahadur,
 Head Quarter 51 Sub-Area,
 C/o 99 APO.

-Versus-

- 1) The Union of India, represented by the Secretary, Ministry of Defence, New Delhi.
- 2) The Colonel, 51 Sub-Area, O.C.T.P.S., C/o 99 APO,
- 3) The Senior Area Accounts Officer, Ministry of Defence, Beaver Road, Shillong-1, Meghalaya.

- Respondents.

DETAILS OF THE APPLICATION:

*Gopal
Lama*

1) PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

This application is made against the impugned Order of recovery of House Rent Allowance from the applicant vide Office Memorandum No. P/V/AAD/14 dated 04-07-2001 issued by the Respondent No. 3.

2) JURISDICTION OF THE TRIBUNAL

The applicant declares that the Subject matter of the instant application is within the jurisdiction of this Hon'ble.

3) LIMITATION

The applicant further declares that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4) FACTS OF THE CASE :

4.1 That the applicant is a citizen of India and as such, he is entitled to all the rights and privileges guaranteed under the Constitution of India.

4.2 That your applicant begs to state that he is working under the Respondent Nos. 2 as a Messenger. He is a Defence Civilian Employee. The applicant is a Group-D employee.

*Scanned
by
MRGAG*

4.3 That your applicant begs to state that prior to posting of messenger was residing at Rented House at Panjabari, Guwahati. The amount of House Rent which was received by him was paid to the owner of the said Rented House. When he was posted to the Dispatch Section he used to carry out his works beyond the stipulated hours as ordered by the competent authority. He has to work even in the dead of night.

4.43 That your applicant begs to state that due to difficulty faced by him for carrying out his work from his rented house at Panjabari the Respondent No. 2 has allotted him Quarter No. 82 Phase-II vide Order No. 1801/3/Est dated 26 May 1998 at Narengi Camp Area. The said quarter actually is not a civilian persons quarter, it is for military persons only. While allotting the quarter the Respondent No. 2 has not followed the rule and procedure in regard of allotment of Quarter to Civilian Person. The Station Head Quarter is the competent authority for allotment of Quarters to Civilian person but the Respondent No.2 has no authority for allotment of quarter to the civilian person. The Military Engineering Service is also authority for deduction of water and electric charges when there are proper allotment of Quarters to the Civilian persons. As such, the Respondent No. 2 has temporarily arranged the said quarter to

People
Par. 644

the applicant as he was facing difficulty to carrying out his work properly.

It is pertinent to mention here that at the time of allotment of the said quarter the Respondent No. 2 has also ordered to the concerned officials not to deduct House Rent Allowance, Water and Electricity Charge from applicant's salaries and the Respondent No. 2 also instructed the applicant not to prefer any claim of overtime allowance for performing duties beyond the specific hours in consideration of non-deduction of HRA water and electricity charges. Accordingly, the applicant never submitted over-time allowance although he rendered thousands of hours of over time duties. That for kind perusal of the Hon'ble Tribunal one photocopy of proper allotment order of quarters to similarly situated persons has also been annexed herewith.

Annexure-A is the photocopy of order of allotment of Quarter vide No. 1801/3/Est dated 26 May 1998 issued by the Office of the Respondent No.2 to the applicant.

Annexure-B is the photocopy of one of the proper allotment order of Government accommodation at Narengin Camp.

*Copy
AR-269*

4.5 That the applicant begs to state that most surprisingly the Office of the Respondent No. 2 issued a letter to the applicant vide No. 1830/3/Est 25th July 2001 which is also annexed with an Office Memorandum No. P/V/AOO/14 dated 04-07-2001 issued by the Respondent No. 3 ordered recovery of House Rent Allowance w.e.f. June 1998 to June 2001 for a period of 3(three) years of total amount of Rs. 18,497/- (Rupees Eighteen Thousand Four Hundred Ninety-Seven) only.

Annexure-C is the photocopy of Order No. 1830/3/Est/ dated 25th July 2001 issued by the Office of the Respondent No. 2.

Annexure-D is the photocopy of Office Memorandum No. P/V/AOO/14 dated 04-07-2001 issued by the Respondent No.3

4.6] That your applicant begs to state that earlier one Sri Bhim Singh Thapa, Daftry was allotted the same quarter under the same terms and conditions with the applicant and Sri Thapa reside in the quarter for 10 years but no HRA, Water and Electricity charges were recovered from him. The applicant was posted in place of Sri Thapa and are performing the same duties as Sri Thapa performed earlier.

4.7] That your applicant begs to state that he is not responsible for the negligence

Copy
M/2609

committed by the Respondent No. 2 in allotment of quarter or non-deducting his HRA at the relevant time. He being a poor Government employee who is performing his duties with full satisfaction with the authority and hence he cannot be held responsible for the mistakes committed by the Respondent No. 2. It is also not possible for the poor applicant to return back the huge amount of Rs. 18,497 (Rupees Eighteen Thousand Four Hundred Ninety-Seven) only. By the little income of salary he has to manage his family, he has no other source of income. Hence, finding no other alternative the applicant approached this Hon'ble Tribunal for seeking justice and also giving him protection by issuing an interim order for non-recovery of House Rent Allowance by the Respondent from the applicant.

4.8 That your applicant begs to state that he has already vacated his above-mentioned quarter on 11-03-2001 as order issued by the competent authority.

4.9 That your applicant submits that action of the Respondents is illegal, arbitrary, mala fide and also whimsical. The respondents have also violated the fundamental rights and natural justice.

4.10 That your applicant submits that the applicant can be not held responsible for any lapse or irregularities committed on the part of the respondents in payment of House Rent Allowance to the applicant.

Leopold
Re-26/09

4.11 That your applicants submit that there is no other alternative remedy and the remedy sought for if granted would be just, adequate and proper.

4.12 That this application is filed bona fide and for the cause of justice.

5) GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

5.1] For that on the reason and facts which are narrated above the action of the Respondents is *prima facie* illegal and without jurisdiction.

5.2] For that the action of the Respondents are *mala fide* and illegal and with a motive behind. As such, the impugned order of recovery is liable to be set aside and quashed.

5.3] For that the Respondents have paid the House Rent Allowance to the applicants after being full satisfaction with his eligibility criteria. Hence, the impugned recovery order of House Rent Allowance is *mala fide*, illegal and without jurisdiction.

Copy
1826a9

5.4] For that the payment of House Rent Allowance was not obtained by the applicant by any fraudulent means but the Respondents after finding him eligible, paid the House Rent Allowance to the applicants.

5.5] For that similarly situated persons who are working in the same Office have already been given the reliefs but the Respondents have not given the same reliefs to the instant applicants. As such, the impugned order is bad in the eye of law and also not maintainable.

5.6] For that being a model employer the Respondents can not deny the same benefits to the instant applicants which have been granted to other similarly situated persons. As such, the Respondents should extend this benefit to the instant applicants without approaching this Hon'ble Tribunal.

5.7] For that the applicant have already spent his House Rent Allowance, as such, it is not possible on the part of the applicant being a poor low paid employee to return back the same. As such, impugned recovery order of House Rent Allowance is liable to be set aside and quashed.

George
NirGang

5.8) For that in any view of the matter the action of the Respondents are not sustainable in the eye of law.

The applicants crave leave of this Hon'ble Tribunal to advance further grounds at the time of hearing of instant application.

6) DETAIL REMEDY EXHAUSTED:

That there is no other alternative and efficacious remedy available to the applicants except invoking the jurisdiction of this Hon'ble Court under Section 19 of the Administrative Tribunal Act, 1985.

7) MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT:

The applicants further declares that they have not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, authority or any other bench of this Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8) RELIEF PRAYED FOR:

*Copies
M. 26/2*

Under the facts and circumstances stated above your Lordships may be pleased to admit this petition and also call for records and show cause as to why the impugned recovery order issued under Memo No. P/V/AAO/14 dated 04-07-2001 issued by the Respondent No. 3 at Annexure-D should not be quashed and after hearing the parties your Lordships may be pleased to pass following reliefs:

8.1 To Set aside and quash the impugned recovery order issued under Memo No. P/V/AAO/14 dated 04-07-2001 at Annexure-D issued by the Respondent No. 3.

8.2 To pass any other order or orders as deem fit and proper by the Hon'ble Tribunal.

8.3 Cost of the application.

9) INTERIM ORDER PRAYED FOR:

Pending final decision of this application the applicants seek issue of the interim order:

9.1) That the Hon'ble Tribunal may be pleased to stay the impugned recovery order issued under Memo No. P/V/AAO/14 dated 04-07-2001 at Annexure-D issued by the Respondent No. 3.

Copy
2020

10. APPLICATION IS FILED THROUGH ADVOCATE.

11) PARTICULARS OF I.P.O./BANK DRAFT

I.P.O.No./Bank Draft: 76598928

Date of Issue : 28.8.2001

Issued from : Gurukul G.P.O.

Payable at : Gurukul

12) LIST OF ENCLOSURES:

As stated in index.

-Verification.

Leopa
n/2699

Verification

I, Sri Gopal Lama, 2699, Messanger, S/o Late Jagat Bahadur, Head Quarter 51 Sub-Area, C/o 99 APO, applicant of the instant application and verify the statements made in accompanying application and in paragraphs 4.1 to 4.3, 4.6 to 4.8 are true to my knowledge and those made in paragraphs 4.4, 4.5, are true to my information being matter of records and which I believe to be true and those made in paragraph 5 are true to my legal advise and I have not suppressed any material facts.

I signed this verification on this day 30th of August 2001 at Guwahati.

*Gopal
n/2699
Declarant.*

(Sri Gopal Lama)

ESTABLISHMENT BRANCH

X

ALLOTMENT OF GOVT MARRIED ACCN

1. Qtr No 82, Phase II is hereby allotted to No 2699
Magr Shri Gopal of HQ 51 Sub Area.

2. Proper handing/taking over will be done and defi
if any will be reported to Camp Comdt immediately.

(ML Kar)
Lt Col
Est Offr
for OC Tps

Shri Gopal

Internal

CQMH

Office copy

*GSD/

J.P. *After Ed*
Amrit

OCCUPATION/VACANTION RETURN OF THE
GOVT BARBED WIRE BARRAGE CAMP IN -11-

ANNEXURE -B

SIR NO	Rank	Name	Married	Having	12 NOV	Date of Occupation	Remarks
			single	AUHBY			

2. ID 1411375 RSR B K Das

-do- C-33 Oct 87

Stn HQ letter ID
5552/4/33 dt 22 Sep 87

10, 51 Sub Area
C/O 99 APO

25 Jan 88

1601/4/est

BSO Marang
UARSO Marang

AS ABOVE

Our report on the above subject for the month of Oct 87
is submitted in duplicate.

(Intiaz Ahmed)
Maj
Camp Comdt
for OC TPS

copy to :-

Stn HQ Gauhati - For info.

Intiaz Ahmed
Maj

-16-

ANNEXURE - C

HO 51 Sub Area
C/O 99 APO

29
Jul 2001

1830/3/Est

No 2699 Msgr
Sh Gopal

RECOVERY OF HOUSE RENT

1. Ref your request for personal ~~copy~~ of Area Accounts Office Shillong letter No P/V/AAO/14 dated 04 Jul 2001, made to CC Tps on 24 Jul 2001.
2. Photocopy of Area Accounts Office Shillong letter No P/V/AAO/14 dated 04 Jul 2001 is hereby handed over to you.

Encls : one


(GQ Singhla)
Lt Col
Camp Comdt


After C1
JG
Annexure

वापर
Memorandum

प्रेषक Area Deauts फ्लॉ ५१ Sub. Reg
From सेवा मे...
Office Shillong To C/o ९९ ADO
No. Station Shillong Date ५/७/२००१
PLB/AD/14

Subject : - Allotment of Govt. material accommodation
to CIV : Recovery of Stays Rent and
allied Charges (in respect of NO २६९९
M/s. Shri Gopal of Fls ५१ Sub. Area

Ref : - Your Letter no : १८३०/३/६१- dt
१५/३/२००१

With reference to your above cited
letter it is stated that NO २६९९ M/s.
Shri Gopal was already allotted Govt
accommodation w.e.f २६/५/१९९८ and on recuperation
from this office's monthly Regular Pay Bills
it is also seen that H.R.A is being
regularly paid to the above individual
w.e.f ६/१९९८ — ६/२००१ i.e; for a period of
almost 3 years of which the total amount
of over pay mount as calculated comes to
Rs १८४७/- (Rupees eighteen thousand four hundred ninety
seven only) which is also contradictory to his ~~amt~~
Hence, the excess amount is ~~१८४७/-~~
~~has been noted in the Deceased Register for recovery~~
on an ~~actual~~ monthly basis @ ५३०/- Pm in ३४ equal installments
one thousand ~~५०~~ ५७७/- per month to help the individual
from facing financial hardships. This may
also be got noted at your end and record
the same starting w.e.f the month of
July/२००१ from this monthly Pay & allowances
till the entire amount is liquidated.

Please acknowledge receipt and
Confirm action.

7

५/७/०१

(S. Singh.)
Officer Accounts Officer
Deputy Collector, Shillong

Attested
Anwate

(18)

केन्द्रीय प्रशासनिक अधिकार बोर्ड Central Administrative Tribunal
24 DEC 2001
पुस्तक वर्ग GUWAHATI BENCH

6/1
Filed

21/12/01
B. C. Pathak
(B. C. Pathak)
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

O.A. NO. 343 OF 2001

Shri Gopal Lama

FRS R - Applicant

given govt free or commnd - vs -
not entitled - Union of India & Ors.
Illegality cannot confnd any rights Respondents.

(Written Statements for and on behalf of the

CAT Judgment
Double NFA - admissible
in NE in certain cases
The Written Statements of the abovenoted respondents are as follows :

1. That a copy of the O.A. No. 343/2001 (referred to as the "application") has been served on the respondents. The respondents have gone through the same and understood the contents thereof. The interest of all the respondents being similar, common written statements are filed by all of them.
2. That the statements made in the application, except those which are specifically admitted, are hereby denied by the respondents.
3. That with regard to the statements made in para 1 of the application, the respondents state that the impugned order has been issued in conformity with law, hence there was no

-2-

illegality in issuing the said impugned order dated 4.7.2001.

4. That the respondents have no comments to offer against the statements made in para 2, 3, 4.1 and 4.2 of the application.

5. That with regard to the statements made in para 4.3, the respondents state that the claim of the applicant that he was residing in Panjabari in rented house as well as paying house rent prior to his posting as a messenger, are required to be ascertained. The contention of the application that he used to work beyond the stipulated hours as well as worked till the dead of night is totally false and misleading. It is pertinent to mention that the individual has never stayed beyond the working hours. On the contrary there have been numberous instances when the individual had come late to the office as well as left the office early on some pretext ~~xx~~ or the other.

6. That with regard to the statements made in para 4.4, the respondents state that the contention of the applicant that he was facing difficulty in carrying out the work from the rented house from Panjabari, and because of this, the army authorities had allotted him Quarter No.82 in Phase II at Narangi Cantt-Guwahati, is absolutely incorrect. Panik Panjabari is located in close proximity of this Headquarters so the contention of the individual to allot the quarter in Narangi Camp is not true. The officer who had allotted the quarter is no more and it is not clear under what ground the allotment was made. The only ~~six~~ plausible reason could have been on welfare basis. The contention of the applicant that respondent

respondent 2 had ordered not to deduct water and electricity charges from the individual salary and that he had also instructed him not to prepare any claim of overtime allowance for performing the duties beyond specific hours in consideration for non-deduction of HRA, water and electricity charges is false and fabricated. The applicant's contention that he had never submitted claim for overtime allowance for having rendered thousand of hours of overtime duties is absolutely baseless, false and malicious. There was no question of claiming over time allowance as the individual never worked beyond the ~~the~~ laid down office timings .

7. That with regard to the statements made in para 4.5, the respondents state that since the applicant was staying in Govt. married accommodation he was not entitled to claims house rent allowance. The applicant kept taking the system for a ride by keeping quiet and kept enjoying both the benefits of staying in a Govt married accommodation as well as kept claiming house rent allowance. The individual tried to hoodwink the system and would have continued doing the same had the same not come to light. Once this fraud came to light the Area Account Office Shillong was accordingly informed to effect recovery of House Rent Allowance with effect from Jun 1998 to Jun 2001 for Rs. 18,497/- (Rupees eighteen thousand four hundred ninety seven only) which was illegally claimed by the individual.

8. That with regard to the statements made in para 4.6, the respondents state that the applicant's contention that the same quarter was earlier allotted to Bhim Singh Thapa, Daftary, is absolutely incorrect and the individual is trying to hide the fraud committed by him. The applicant is put to strict proof thereof, without cogent evidence, nothing is admitted by the respondents. It is also humbly submitted that the applicant cannot get both the benefit of HRA and also Govt. Housing accommodation at a time, which would otherwise be discriminatory to other employees and derogatory to rules.

9. That with regard to the statements made in para 4.7, the respondents state that the applicant has stated he is not responsible for the negligence committed for allotment of Govt. married accommodation as well as for non deduction of HRA at the relevant time. His contention is absolutely untrue and misleading. The applicant has deliberately cheated the system by having stayed in Govt. accommodation and also having claimed HRA knowing fully well that it was incorrect and against the rules. The individual has also stated that he has little income and it will not be possible for him to return the amount of Rs. 18,497/- An amount of Rs. 530/- per month is being deducted on monthly basis so as to facilitate the individual. In fact the individual has been let off very leniently and deserved a serious punishment because of the fraud committed by him.

-5-

10. That with regard to the statements made in para 4.8, the respondents state that the applicant was made to vacate the quarter on 12 Mar 2001 once the fraud was detected.

11. That with regard to the statements made in para 4.9, the respondents state that the contention of the applicant that action taken by the Army authorities is illegal, arbitrary, malafide and also whimsical is not correct and no fundamental rights have been violated and also no injustice has been committed.

12. That with regard to the statements made in para 4.10. 4.11 and 4.12, the respondents state that it is the whole and sole responsibility of the applicant who has committed this irregularity. He only has to be blamed for this act. The applicant has to make good the payment of MRA which has been claimed by him & fraudently since Govt. money has been claimed un-justifiably and the individual has to repay the same. The application filed by the individual is absolutely unjustified and is required to be dismissed without any further hearing.

13. That with regard to the statements made in para 5.1 to 5.8 the respondents state under the very facts of the prevailing rules, not a single ground is tenable in the eye of law. Hence, the application is liable to be dismissed with cost.

-6-

14. That with regard to the statements made in para 8.1 to 8.3 and 9.1, the respondents state that in view of the facts and ~~xxxxxx~~ circumstances of the case, provisions of law involved, the applicant is not entitled to any relief whatsoever as prayed for and the application is liable to be dismissed with cost as devoid of any merit.

In the premises aforesaid, it is therefore, prayed that Your Lordships would be pleased to hear the parties, peruse the records, and after hearing the parties and perusing the records, shall further be pleased to dismiss the application with cost.

Verification.....

-7-

VERIFICATION

I, Sri IC-33731N Col Rajen Gurung, presently working as the Officer Commanding Troops, HQ 51 Sub Area, being competent and duly authorised to sign this verification, do hereby solemnly affirm and state that the statements made in para 1 to 14 — , are true to my knowledge and belief, those made in para — , being matter of records, are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this 24th day of December 2001, 2001 at Guwahati.

Deponent

Col Rajen Gurung
Officer Commanding Troops
HQ 51 Sub Area