

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 352/02

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet. OA-352/02Pg. 1to 3
2. Judgment/Order dtd. 09/04/2003Pg. 1to 15 Dismissed
3. Judgment & Order dtd.Received from H.C/Supreme Court
4. O.A. 352/02Pg. 1to 75
5. E.P/M.P. NILPg.to
6. R.A/C.P. NILPg.to
7. W.S. Respondents No-1,2,3 & 4Pg. 1to 23
8. RejoinderPg.to
9. ReplyPg.to
10. Any other PapersPg.to
11. Memo of Appearance
12. Additional Affidavit
13. Written Arguments
14. Amendement Reply by Respondents
15. Amendement Reply filed by the Applicant
16. Counter Reply

SECTION OFFICER (Judl.)

(SEE RULE -4)

GENERAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

....

ORDER SHEET

Original Application No : 352 / 2002
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicant (s) All India Employees Union 2015

-Vs-

Respondent (s) UOI & OAS.

Advocate for the Applicant (s) Mr B.K. Sharma, S. Sarma,
Miss W. Das.

Advocate for the Respondent(s) Addl. C.G.S.C. A.K. Chaudhuri

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form but not in time Indonation Petition is Filed / not filed C F for Rs. 50/- deposited IPO/BD No. 74576177 Dated 28.10.02</p> <p><u>28/10/02</u></p> <p><u>NO Steps</u></p> <p><u>Pets received. Notice prepared</u> <u>and sent to Dls for filing</u> <u>the Respondent No. 1 to 4.</u> <u>to Regd. A/A.</u></p> <p><u>D/N 3110 to 3113</u> <u>Dtd 15/11</u></p>	<p>29.10.2002</p> <p>bb 29.11.02</p>	<p>Heard Mr.S.Sarma, learned counsel for the applicants and also Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. for the respondents</p> <p>Issue notice of motion, returnable by four weeks. Also issue notice to show cause as to why interim order as prayed for shall not be granted issued.</p> <p>List for admission on 29.11.2002.</p> <p><u>K.K. Shaha</u> Member</p> <p>Heard Mr.S.Sarma learned counsel for the applicant and also Mr.A.K.Choudhury, learned Addl.C.G.S.C. for the respondents. Mr.A.K.Choudhury, learned Addl. C.G.S.C has stated that he has yet contd/-</p>

3

2

O.A. 352 of 2002

29.11.02 to obtain necessary instruction on the matter. Considering the pleadings and upon hearing the parties the respondents are directed not to make any recovery of the compensation in the rent free accomodation which were already paid to the applicant till the returnable date.

List on 3.1.03 for Admission.

Vice-Chairman

lm

3.1.2003 Due to vacation, the case is adjourned to 31.1.2003.

31.1.2003 Heard Mr. S.Sarma, learned counsel for the applicant.

The application is admitted. Call for the records.

The respondents are directed

31.2.2003 Heard Mr. S.Sarma, learned counsel for the applicant.

The application is admitted. Call for the records.

The respondents are directed to file written statement within four weeks from today.

List on 7.3.2003 for orders.

In the meantime, interim order dated 29.11.2002 shall continue.

Vice-Chairman

mb

Order dtd 31/1/03
Communicated to
the Justice Comm.
3/2

11.2.03

W/s submitted
by the respondent Nos. 1, 2, 3 & 4.

7.3.2003. Court did not sit today.
The case is adjourned to 21/3/2003

Notes of the Registry

Date

Order of the Tribunal

21.3.2003

Written statement has been filed. The case may now be listed for hearing on 9.4.2003. The applicant may file rejoinder, if any, within two weeks from today.

No rejoinder has been filed.

My
8.4.03

[Signature]
Vice-Chairman

bb

9.4.2003

Heard learned counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets. The application is dismissed in terms of the order. No order as to costs.

23.4.2003

Copy of the Judgment has been sent to the D/Sec. for issuing the same to the applicant as well as to the Addl. G.S.C. for the Respon.

HS

[Signature]
Vice-Chairman

mb

4

O. A. M.

Notes of the Registry

Date

Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

✓ O.A. / R.A. No. 352 of 2002.

9-4-2003.

DATE OF DECISION

All India Postal Employees Union, Kohima
..... APPLICANT(S).

Sri S.Sarma
..... ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

Union o India & Ors.
..... RESPONDENT(S).

Sri A.K.Choudhury, Addl.C.G.S.C.
..... ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN

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 Ho'ble Vice-Chairman

✓

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 352 of 2002.

Date of Order : This the 9th Day of April, 2003.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

1. All India Postal Employees Union,
Postman and Gr.D, represented by
the Divisional Secretary, Md, Firoz Alam,
Divisional Branch, Kohima-797001.
2. Sri Dilip Kumar Singh,
Postman, Kohima Head Office,
Nagaland.
3. All India Postal Employees Union,
Class III (Including ED)
Divisional Branch, represented by the
Asstt. Divisional Secretary,
Mr Kevilekho Angami,
Kohima 797001.
4. Sri B.B.Nath,
Postal Assistant, Kohima Head Post Office,
Kohima, Nagaland-797001.

...Applicant

By Advocate Sri S.Sarma
Versus

1. Union of India,
represented by the Secretary to the
Govt. of India, Ministry of Communication,
Deptt. of Posts,
New Delhi.
2. Director General of Posts,
New Delhi-1.
3. Chief Postmaster General,
N.E.Circle, Shillong.
4. The Director of Postal Services,
Nagaland Division,
Kohima-797001.

...Respondents

By Sri A.K.Choudhury, Addl.C.G.S.C.

O R D E R

CHOWDHURY J.(V.C)

The legitimacy of the measure taken by the respondents for recovery of pay in lieu of Rent Free Accommodation is the subject matter of dispute in this application. The controversy raised in this application was earlier raised before this Tribunal. By an order dated 22.8.95 in O.A.48/91 and series of like cases the Tribunal ordered for payment of licence fee at the rate of 10% of monthly pay with effect from 1.7.1987 or actual date of

posting in Nagaland upto date and continue to pay the same until the concession was withdrawn or modified by the Government of India or till the rent free accommodation was not provided. The Tribunal also issued direction for payment of arrears for the period from 1.7.87 or actual date of posting in Nagalandupto 21.8.95 subject to adjustment of amount as was already made. In terms of the order the respondents paid the amount at 10% of basic pay till 30.6.99 and thereafter proposed to pay at flat rate as the rate of RFA is revised with effect from 1.7.99 under Ministry of Finance O.M.No.2(7)/97-El1(B) dated 21.12.99. The said order dated 12.11.2001 issued from the office of the Chief Postmaster General, N.E.Circle, Shillong reads as follows :

"With ref. to the above mentioned subject, I am directed to intimate that the revised rates of RFA fixed by the Ministry of Finance, Department of Expenditure OM No.2(7)/97-El1(B) dtd.21.12.98 will supercede the rate of 10% of revised scale fixed vide Dte's letter No.4-52/98-PAP dtd.27.1.99. This letter is not dtd.21.12.98 rather it is dtd.21.12.99 which will supercede the letter dtd. 27.1.99. The revised rates will be made applicable to the postal Employees of Nagaland Dn. This excess amount already paid to the employees after 1.7.99 will have to be recovered. This is effective with effect from 1.7.99. The overpayment will be recovered. The decision taken by the Divisional Head is final for fixing the instalment."

The legality of the aforementioned action among others was assailed by way of an O.A. before this Tribunal which was registered and numbered as O.A.458/2001. This Bench after considering the plea raised by respective parties among others held as follows :

"Admittedly, the impugned order dated 12.11.2001 and the consequent order dated 19.11.2001 were passed after an appropriate decision was taken by the Govt. of India. Mr S.Sarma, learned counsel for the applicants submitted that the impugned action of the respondents in revising the pay scale is contrary to the law and spirit of the

judgment rendered by the CAT in O.A.Nos.2/1994 and 226/1998. We have perused the whole context of the order of the Tribunal. In the order the Tribunal in its judgment did not pass any order for extending facilities of compensation in lieu of rent free accommodation continually. In the very order itself the Tribunal issued direction to continue to pay the same until the concession was not withdrawn or modified by the Govt. of India or till rent free accommodation was provided. It is the Govt. of India which is the competent authority to pass appropriate order on the matter. As a matter of fact, as mentioned in the communication dated 21.12.1999 the President of India took a decision on the matter and the respondents authority only implemented the same. The communication No.4-52/98-PAP dated 27.1.99 issued by the Govt. of India, Ministry of Communication, Deptt. of Posts addressed to the Chief Postmaster General, N.E.Circle, Shillong itself indicated that payment would be subject to further clarification that would be obtained from the Ministry of Finance. The payments were made subject to the conditions that 'if it was found subsequently that any unintended benefit accrued to the petitioners, that would be recovered on receipt of such clarification/decision of Ministry of Finance.

In the set of circumstances, the action of the respondents cannot be faulted as arbitrary and unlawful. We do not find any merit in this application. The application thus stand dismissed."

The respondents authority thereafter issued the following order which is impugned in this proceeding.

"Sub : Grant of compensation in lieu of rent free accommodation.

The petition of the Service Union claiming compensation at the rate of 10% of pay in lieu of Rent Free Accommodation in O.A.No.458/2001 has been dismissed by the Hon'ble CAT in judgment dtd. 8.8.02.

It is therefore, requested that clarification/instructions given by CO vide their letter no.Bldg/5-1/76/Rlg dtd. 12.11.01 and circulated to you vide this office letter of even no. dtd. 19.11.01 may kindly be strictly and immediately implemented.

You are also requested to calculate the amount already paid to average staff for the purpose of working out the no. of instalments for recovery."

The applicant is now assailed the above order as unlawful and prayed for the benefit of the order dated 27.1.99.

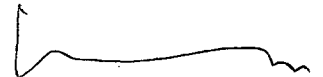
2. I have heard Mr S.Sarma, learned counsel appearing for the applicants as well as Mr A.K.Choudhury, learned Addl.C.G.S.C for the respondents at length. Mr Sarma, the learned counsel for the applicant referred to the communication sent by the Ministry of Communication, Govt. of India dated 27.1.99 and drawn my attention to that part of the order to show and establish that the authority passed the afforesaid order with due application of mind and the said order was a conscious order passed by the authority. I have perused the order referred to above which reads as follows :

I am directed to refer to your office letter/FAX No.Est/2-128/Rlg/Corr./III dtd.23.12.98 on the above subject. The case has been examined at this end and it has been decided that the benefit of 10% of pay (including the revised pay scale w.e.f.1.1.96) as compensation in lieu of rent free accommodation may be extended to the petitioners only as per the directive of the Court which is as per the clarification received from the Ministry of Finance. Payment will be subject to further clarification that would be obtained from the Ministry of Finance in this matter. If it is found subsequently that any unintended benefit accrued to the petitioners, that would be recovered on receipt of such clarification/decision of Ministry of Finance. This may please be brought to the notice of all concerned staff."

Mr Sarma, the learned counsel submitted that since the Government took a decision now there is no justification for resiling from that order. The very order itself which is relied on by Mr Sarma indicated that payment was subject to further clarification that would be obtained from Ministry of Communication. The said order was passed as a matter of fact in view of the interim order passed by the Court. The aforementioned communication was considered by this Bench in earlier O.A.458/2001 and observed that payment were made subject to conditions mentioned in the order. The said communication did not vest any irreversible right on the applicants. The impugned order dated 8.9.2002 was only a consequential ^{measure} commenced by the respondents to recover the

amount which was paid due to the contingency. Mr Sarma submitted that since the amount was already paid to the applicants it would cause hardship to the applicants if the recovery process is allowed. The submission of Mr Sarma cannot be accepted in view of the fact that payments were made subject to the conditions mentioned in communication dated 27.1.99 and these amounts were paid subsequent to this communication. The benefit admittedly unintended benefit and therefore the applicant cannot be allowed to take advantage of the same. In the circumstances, I do not find any merit in the application. Accordingly the application is dismissed.

Interim order stands vacated. There shall, however, be no order as to costs.



(D.N.CHOWDHURY)
VICE CHAIRMAN

2815

12

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNALGUWAHATI BENCH

(An application under section 19 of the Administrative Tribunal Act.1985)

O.A.No. 352 of 2002.

BETWEEN

All India Postal Employees Union & Ors. Applicants.

VERSUS

Union of India & Ors. Respondents.

INDEX

SL.NO.	PARTICULARS	PAGE NO.
1.	Application	1 to 12
2.	Verification	13
3.	Annexure-1	14 to 62
4.	Annexure-2	63
5.	Annexure-3	64
6.	Annexure-4	65
7.	Annexure-5	66
8.	Annexure-6	67
9.	Annexure-7	68
10.	Annexure-8	69 to 73
11.	Annexure-9	74
12.	Annexure-10	75

Filed by : Usha Das, Advocate.

Date :

C:\WS7\NAGA-1

Registration No.:

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH.

U.A.No. 352 / 2002

BETWEEN.

1. All India Postal Employees Union,
Postman and Gr.D, represented by
the Divisional Secretary, Md. Firoz Alam,
Divisional Branch, Kohima. 797001.
 2. Sri Dilip Kumar Singh,
Postman, Kohima Head Office,
Nagaland.
 3. All India Postal Employees Union,
Class III (Including ED),
Divisional Branch, represented by the
Asstt. Divisional Secretary,
Mr Kevilekho Angami.
Kohima, 797001.
 4. Sri B.B.Nath,
Postal Assistant, Kohima Head Post Office. 797001.
Nagaland.
-Applicants.

AND.

1. Union of India, represented by the,
Secretary to the Govt of India,
Ministry of Communication,
Dept. of Posts,
New Delhi.
2. Director General of Posts.
New Delhi-1.
3. Chief Postmaster General,
N.E.Circle Shillong.
4. The Director Of Postal Services,
Nagaland Division.
Kohima. 797001.

DETAILS OF THE APPLICATION

1. PARTICULARS OF THE ORDERS AGAINST WHICH THE APPLICATION IS MADE.

This application is made against the order dated 18.9.2002, issued by the Director of Postal Service, Nagaland Kohima. by which the overpayment of Pay in lieu of Rent Free Accommodation (RFA) has been sought to be recovered.

13
Filed by
applicants through
Alsha Das,
Advocate
28/10/02

the

F. Alam

2. LIMITATION:

The applicants declare that the instant application been filed within the limitation period prescribed under section 21 of the Administrative Tribunal Act, 1985.

3. JURISDICTION:

The applicants further declare that the subject matter of the instant case is within the jurisdiction of the Hon'ble Tribunal.

4. FACTS OF THE CASE.

4.1. That the applicants are citizen of India and as such they are entitled to all the rights, protections and privileges guaranteed by the Constitution of India and laws framed thereunder.

4.2. That the applicant Nos 1 and 3 are Divisional Secretary of All India Postal Employees Union, Postman and Gr. D Divisional Branch Kohima. and Divisional Secretary, All India Postal Employees Union, Class III and ED Divisional Branch Kohima, and they represent the interest of their members through this application. The applicants No 2 and 4 are the affected person and they are similarly situated like that of other members of the Applicants Nos. 1 and 3, on whose behalf the instant application has been filed by the applicant Nos 1 and 3. Accordingly the cause of action and relief sought for by the applicant are same. Thus they pray before the Hon'ble Tribunal to allow them to join together in a single application invoking Rule 5 (4) (a) of C.A.T. (Procedure) Rules 1987.

4.3. That all the applicants are at present working under the respondents at different stations/offices and they are holding various posts under the respondents i.e. under the Department of Posts.

4.4. That the applicants were deprived of their legitimate claim of Compensation in lieu of Rent Free Accommodation RFA. They made several representations to the authority concerned for grant of the same but same was denied to them by the respondents. The applicants having no other alternative had approached the Hon'ble Tribunal by way of filing O.A. No. 2 of 1994. The aforesaid matter came up before the Hon'ble Tribunal for hearing and upon hearing the parties the Hon'ble Tribunal was pleased to allow the said application of the applicants on 22.8.95. It is pertinent to mention here that along with the said application there were 5 more applications of different applicants of different offices claiming the same relief and the Hon'ble Tribunal passed a common order on 22.8.95, allowing the claim of the applicants.

A copy of the said order dated 22.8.95 is
annexed herewith and marked as ANNEXURE-11.

4.5. That pursuant to the aforesaid order dated 22.8.95 passed by the Hon'ble Tribunal, the applicants became entitled to get the compensation in lieu of RFA. The respondents have implemented the aforesaid order of the Hon'ble Tribunal and allowed the said benefit of compensation in lieu of RFA to the applicants. As per the order of the Hon'ble Tribunal the applicants are entitled to get 10% of their basic pay as compensation in lieu of RFA.

ve

4.6. That after the aforesaid judgment and order dated 22.8.95 the 5th pay Commission Report came into force and the pay structures of the applicants have been revised. The said revision of pay scale has been made effective w.e.f. 1.1.96 to all the applicants and from that date the applicants has been getting the revised rate of pay. It is clear from the aforesaid Annexure 1 order dated 22.8.95 that the applicants are entitled to get the revised rate of Compensation in lieu of RFA i.e. 10 % of revised rate of pay scale w.e.f.1.1.96. But the said revised rate of Compensation was denied to the applicants and they were getting the said compensation in lieu of RFA i.e, 10 % of old pay scale.

4.7. The applicants made several representations to the authority concerned to revise the rate of Compensation in lieu of RFA w.e.f. 1.1.96. Upon receipt of such representations the Chief Post Master General issued an order on 4.12.97 by which clarification for payment of compensation in lieu of RFA has been given stating that pending clarification from Directorate the petitioners will be paid the said compensation in lieu of RFA at the old rate. The aforesaid order was issued to the Director Postal Services Nagaland, Kohima for implementation.

A copy of the order dated 4.12.97 is annexed
herewith and marked as ~~ANNEXURE-22~~

4.8. That after receipt of the aforesaid order the Director, Postal Services, Nagaland, Kohima misinterpreting the term "at the old rate" as mentioned in the said order has been paying the compensation in lieu of RFA to the applicants at the old basic pay in spite of the fact that after 1.1.96 the said old pay scale has been revised. The respondents ought to have paid the applicants the said compensation at the old rate i.e.10% of the

17

basic pay and that 10% is required to be calculated on the basis of new basic revised pay scale effected by fifth pay commission report. On the face of it the respondent i.e. the Director, Postal Services misread the aforesaid Annexure-1 judgment and Annexure-2 letter dated 4.12.97.

4.9. That the applicants beg to state that under the Ministry of Communication there are two Departments namely Department of Telecommunication and department of Posts. On enquiry the applicants however could come to know that the employees of Department of Telecommunication are at present getting their said compensation at the revised rate taking in to account the basic pay after 5 th Pay Commission Report. The said discrimination has resulted in hostile discrimination as per Art 14 and 16 of the Constitution of India.

4.10. That the applicants beg to state that the action of the respondents in treating the applicants differently with that of the employees of Department of Telecommunication is violative of principles of natural justice and administrative fair play. The respondents being a model employer should not have acted in such a manner as has been done in the instant case. The applicants firstly were sought to be deprived altogether from the said benefit and secondly, they are being paid on the basis of old pay scale even after the revision of pay which is not at all tenable.

4.11. That the applicants made several requests to the authority concerned highlighting the grievances, but same has not yielded any result in positive. Adding insult to their injury, the employees who had entered in their services after 22.8.95 and who are members of the applicant No.1 and 2's union have been

4

deprived of their said benefit of compensation taking the plea that they were not party to the Annexure-1 judgment. Law is well settled that when some principles have been laid down by any competent Court of Law, the said principles are applicable to all the similarly situated persons irrespective of the facts that whether they have gone to the Court or not. In this manner, all the employees can not be forced to approach the doors of Court for similar benefit and as a natural consequences the benefit of the said judgment is required to be given to all the similarly situated employees. However, in the instant case the respondents have denied the benefit to the members of the applicants who have entered in to the service after the date of judgment (22.8.95).

4.12. That the applicants beg to state that being aggrieved by the aforesaid action of the respondents made a representation to the respondents i.e respondent No.3 & 4 on 31.1.98 highlighting their grievances but till date no reply has been given to them. In the said representation the applicants highlighted Annexure-1 judgment dated 22.8.95 and Annexure-2 Order dated 4.12.97.

A copy of the aforesaid representation dated 31.1.98 is annexed herewith and marked as ANNEXURE-3.

4.13. That the applicants praying for the aforesaid relief preferred O.A No 226/98 before this Hon'ble Tribunal. The Hon'ble Tribunal after hearing the parties was pleased to dispose the said O.A on withdrawal taking into consideration the fact that the relief has already been granted to the applicants.

A copy of the said judgment dated 31.5.2001 is annexed herewith and marked as ANNEXURE-4.

4.14 That the applicants beg to state that during the pendency of the earlier proceeding issued an order dated 27.01.1999, by which it has been clarified that the applicants will get the benefit 10% of pay (including the revised pay scale w.e.f. 1.1.96) as compensation in lieu of RFA. In fact taking into consideration the aforesaid aspect of the matter the O.A 226/98 was withdrawn by the applicants.

A copy of the said order dated 27.1.1999 is annexed herewith and marked as ANNEXURE-5.

4.15. That the applicants continued to get the payment of aforesaid compensation in lieu of RFA @ 10% in the revised rate, pursuant to the aforesaid order dated 27.1.1999. Even the respondents have paid the arrears of the said compensation to all the applicants. Now the respondents have issued an order dated 19.11.2001 communicating the order dated 12.11.2001 issued by the Chief Postmaster General N.E.Circle, stating that the earlier order dated 27.1.99 has been superseded and the amount paid to employees after 1.7.99 will be recovered. The language of the said order dated 12.11.2001 is not very clear and however, it is clear that the respondents have superseded the earlier order dated 27.1.99 by which the benefit of 10 % of pay (including the revised pay scale) as compensation in lieu of RFA.

copies of the said orders dated 19.11.2001 and 12.11.2001 are annexed herewith and marked as ANNEXURES-6 & 7, respectively.

4.16. That the applicants beg to state that the controversy relates to the aforesaid revised rate of compensation in lieu of RFA has been clarified by the order dated 27.1.99 and in any view of the matter the amount paid to them can not recovered now. The

FALAN

20

payment has been accorded by the respondents during the pendency of the earlier case and on that basis the earlier case has been withdrawn. The respondents without affording any reasonable opportunity of hearing has passed the impugned order dated 12.11.2001. Highlighting their grievances the applicants have preferred a representation dated 21.11.2001 to the D.P.S Nagaland for consideration of the matter.

4.17. That the applicants beg to state that in view of the aforesaid impugned order dated 12.11.2001, the respondents took initiative to deduct the excess amount paid to them as per the earlier order dated 27.1.99, w,e,f, the pay bill of Nov. 2001. At that point of time the applicants approached the Hon'ble Tribunal by way of filing O.A No 458/2001. The said O.A was dismissed on the ground that the applicants are not entitled to get RFA @ 10% in terms of O.M dated 21.12.99 conveying Presidential sanction in the matter.

A copy of the said judgment dated 8.8.2002 and the O.M dated 21.12.99 are annexed herewith and marked as ANNEXURES- 8 and 9.

4.18. That the applicants beg to state that the earlier judgment 22.8.95 has laid down the manner and method of payment of RFA, in a clear term. However, the Hon'ble Tribunal at that relevant point of time made it clear that in the event of subsequent clarification the rates will be subjected to change. The Hon'ble Tribunal while adjudicating the matter (O.A 458/2001) came to the conclusion that the applicants are not entitled to RFA @ 10% in terms of O.M dated 21.12.99 but they will be getting the revised rate of RFA on flat rate, as per the earlier judgment dated 22.8.95. The Hon'ble while dismissing the O.A did not observe any thing regarding the recovery part. But the

respondents now have sought to recover the amount already paid to them in respect of RFA.

A copy of the said order dated 18.9.2002 is annexed herewith and marked as ANNEXURE-10.

4.20. That the applicant begs to state that the recovery as has been sought to be made in respect of RFA has already been stopped by the Hon'ble Tribunal in its Annexure-1 judgment, and thus now the respondents are debarred from making any recovery from the pay of the applicants. The respondents have stated that the impugned order dated 18.9.2002 has been issued in the light of the judgment of the Hon'ble Tribunal in O.A no 458/2001, In fact the O.A 458/2001 was the off suit of the earlier O.A 2/94 wherein there has been a clear direction to the respondents not to make any recovery of the amount of RFA paid to the applicants and the Hon'ble Tribunal in the judgment and order dated 8.8.02 (458/01) has only clarified the operative part of the judgment dated 22.8.95 (2/94).

4.21. That the applicants beg to state that the respondents of their own accord have made the payment of RFA @ 10% and that was made effective when the O.A 226/98 was pending before the Hon'ble Tribunal, and it was at that juncture, the applicant withdrew the said O.A. It is stated that the applicants have also spent the said amount on the bonafide belief that since the payment has been made by the competent authority it was their due and entitled benefit. In fact the respondents have not yet decided the rate of RFA even today and in the impugned order itself there has been an endorsement that the applicants are entitled to flat rate of RFA, without there being any further

FALow

clarification.

4.22. That the applicants beg to state that they are the lowly paid Group -C and D staff and in the event of any such recovery as has been sought to be made by issuing the impugned order dated 18.9.2002, they will suffer irreparable loss and injury. It is therefore the applicants pray for an interim order directing the respondents not to deduct any amount from their salary and to suspend the operation of the order dated 18.9.2002 till disposal of the O.A. In case the interim order as prayed for is not granted the applicants will suffer irreparable loss.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the action of the respondents in issuing the impugned order dated 18.9.2002 is illegal, arbitrary and violative of principles of natural justice and hence same is liable to be set aside and quashed.

5.2. For that there being a complete non application of mind by the respondents in not affording a reasonable opportunity of hearing before passing the impugned order and hence same is not sustainable in the eye of law.

5.3. For that the action of the respondents are contrary to their earlier stand taken by issuing the order dated 27.1.99 and now they can not simply withdraw the same without affording them an opportunity of hearing.

5.4. For that in any view of the matter the action/inaction on the part of the respondents are not sustainable in the eye of law and same are liable to be set aside and quashed.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicants declare that they have exhausted all the remedies available to them and there is no alternative remedy available to them.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:

The applicants further declare that they have not previously filed any application, writ petition or suit regarding the grievances in respect of which this application is made before any court or any other Benches of the tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicants most respectfully prayed that the instant application be submitted, records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of the records, be grant the following reliefs to the applicants:-

8.1. To set aside and quash the impugned order dated 18.9.2002 and to allow the benefit of order dated 27.1.99.

8.2. To direct the respondents not to make any recovery in respect of payment made to the applicant on account of RFA.

8.3. Cost of the application.

8.4. Any other relief/reliefs to which the applicants are entitled to and as may be deemed fit and proper by the Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR:

That the applicants pray for an interim order directing the respondents to pay the current revised rate of compensation in lieu of RFA, pending disposal of the application by suspending the operation of the impugned order dated 18.9.2002 without and deduction.

10.

11. PARTICULARS OF THE I.P.O.:

1. I.P.O. No : 7 G 576177
2. DATE : 10/10/02
3. PAYABLE AT : GUWAHATI.

12. LIST OF ENCLOSURES:

As stated in the INDEX.

Verification.....

FAL

25

VERIFICATION.

I, Shri Firoz Alam, S/o Md. Akhtar, aged about 31, years, at present working as Postman in Kohima Head Office, do hereby solemnly affirm and verify that the statements made in paragraphs 2, 3, 4, 11 to 43, 45, 46, 49, 410, 421, 422 & 5 to 12 are true to my knowledge and those made in paragraphs 1, 4, 4, 7, 4, 8, 4, 11 to 420 are matters of records which I believe to be true and rests are my humble submission before the Hon'ble Tribunal and I have not suppressed any material facts of the case. I am the applicant No.1 in this application and I am authorised to sign this application.

And I sign this verification on this the 27th day of Oct, 2002.

Applicant.

Feroz Alam

Original Application No. 48 of 1994 (Nagaland)

with

Original Application No. 2 of 1994 (Nagaland)

with

Original Application No. 11 of 1995 (Nagaland)

with

Original Application No. 37 of 1995

with

Original Application No. 105 of 1995

Date of decision : This the 22nd day of August, 1995. at Kohima.

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman.

The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

Original Application No. 48/91 (Nagaland).

Shri M. Lepdon Ao & 45 Others
belonging to C & D Group of employees posted
in the office of the Director, Geological Survey of India,
Operation Manipur-Nagaland, Dimapur, District, Kohima,
Nagaland

... Applicants

By Advocate Mr. N.N. Trikha

- Versus -

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Steel and Mines, Department of Mines, New Delhi.
2. The Director General, Geological Survey of India, 27, Jawaharlal Nehru Road, Calcutta-700 016
3. The Deputy Director General, Geological Survey of India North Eastern Region, Asha Kutir, Laitumkhrah, Shillong-793003
4. The Director, Geological Survey of India, Operation Manipur-Nagaland, Dimapur.

.... Respondent

By Advocates Mr. S. Ali, Sr. C.G.S.C. and A.K. Choudhury, Addl. C.G.S.C.

Attested

[Signature]

Advocate.

Attested
by
Advocate

15 -
J.A. No. 2/94 (Nagaland).

1. All India Postal Employees Union
P(III) & A.D.A., Divisional Branch
Kohima - 797001, represented by its
Divisional Secretary - Mr. V. Angami.
2. All India Postal Employees Union
Postman Class IV & E.O.,
Kohima Branch, Nagaland,
represented by its Divisional Secretary - Mr. K. Tali Ao.

..... Applicants

By Advocates Mr. B.K.Sharma with M/s.M.K.Choudhury, and S.Sarma.

-Versus-

1. The Union of India,
represented by the Secretary,
Ministry of Communication,
Department of Posts,
New Delhi.
2. The Director General, Posts,
New Delhi-110 001
3. Chief Postmaster General,
N.E.Circle,
Shillong
4. The Director of Postal Services,
Nagaland Division
Kohima

..... Respondents

By Advocate Mr. G.K.Sarma, Addl. C.G.S.C.

G. A. No. 11/95 (Nagaland).

Nagaland Census Employees' Association
represented by its President Mr. L. Angami
Directorate of Census Operations,
Nagaland,
Kohima

..... Applicant

By Advocates Mr. B.K.Sarma with M/s M.K.Choudhury and Mr. S.

-Versus-

te of licence fee was revised.

1. The Union of India
represented by the Secretary
Ministry of Home Affairs,
New Delhi-1
2. The Registrar General of India,
2/A, Mansingh Road,
New Delhi-110001.
3. The Director of Census Operations,
Nagaland,
Kohima

..... Respondents

By Advocate Mr. G. Sarma, Addl. C.G.S.C.

U.A. No. 37/95

Shri N. Aier,
Assistant and 126 Others

..... Applicants

By Advocates Mr. B.K. Sharma with W/s M.K. Choudhury and S. Sarma
-Versus-



The Union of India,
represented by the Secretary
Ministry of Home Affairs
New Delhi-1.

2. The Director,
Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
Kohima

3. The Assistant Director
Subsidiary Intelligence Bureau
Ministry of Home Affairs,
Government of India
Kohima



..... Respondents

By Advocate Mr. G. Sarma, Addl. C.G.S.C.

A Heist
3
Advocate

Attested
W.Das
Advocate.

O.A. No. 105/95

Shri P.H. Babu and 17 Others

..... Applicants

By Advocate Mr. T.K.Dutta.

-Versus-

1. Union of India,
represented by the Secretary to the Govt. of India,
Ministry of Steel and Mines,
Department of Mines,
New Delhi.
2. The Director General,
Geological Survey of India,
27, J.L.Nehru Road,
Calcutta-700 013
3. The Deputy Director General,
Geological Survey of India,
North Eastern Region
Asha Kutir, Laitumkhrah,
Shillong-793003
- The Director,
Geological Survey of India
Operation Manipur-Nagaland,
Dimapur



..... Respondents

By Advocate Mr. G.Sarma, Addl. C.F.S.C.

Judgement

CHAUDHARI J. (V.C.).

All these applications relate to similar claim made by Group ^BC and D employees of the different departments of Govt. of India (concerned in the respective applications) posted in Nagaland and common questions of law arise for determination hence for the sake of a comprehensive consideration of material issues involved and convenience these are being disposed of by this common Judgement.

Attested
by
Advocate

Advocate

te of licence fee was revised.

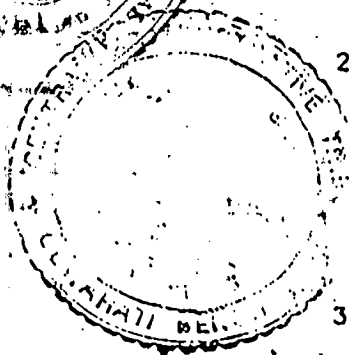
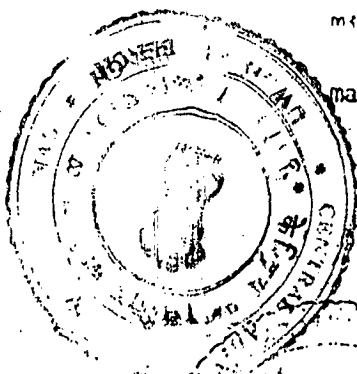
2. The case of the applicants is that ^{as} Central Government B, C & D Group employees posted in Nagaland they are eligible for free furnished accommodation but none has been provided to them and therefore they are entitled to be paid compensation in lieu of the rent free accommodation (consisting of licence fee and House Rent Allowance) but since that is being denied to them and their various representations have not yielded any positive result, they have approached the Tribunal for redressal. They pray that they be held entitled to get the licence fee and house rent allowance retrospectively from due dates.

3. Facts in O.A. 48/91

(a) This application has been filed by 47 Group C and D employees of Geological Survey of India (Ministry of Steel and Mines, Govt of India) who are posted in Nagaland. Their claim is mainly based on following Memoranda & Orders :

1. O.M. No. 2(22)-E-II(B)/60 dated 2.8.60 read with letter No. 41/17/61 dated 8.1.62 (from the D.G. P & T Annexure A.4.
2. O.M. No. 11013/2/86-E-II(B) dated 23.9.86 issued by Ministry of Finance, Govt. of India consistently with the recommendations of the 4th Central Pay Commission and Order No. 11015/41/86-E-II(B)/87 dated 13.11.87 and
3. Earlier decisions of Central Administrative Tribunal, Gauhati Bench with the decision of Hon'ble Supreme Court.

(b) The respondents have filed a common written statement and resist the application. They have raised the bar of limitation on the ground that the cause of action had arisen in 1986 and that



Attended
Advocate

Attested
Advocate

- 19 -

31

could not be agitated in 1991 and contend on merits inter alia that there have been no instructions from the Ministry of Finance that Central Government Employees posted at Dimapur are entitled to rent free accommodation. They however state that O.M. dated 19.2.87 provides that where rent free accommodation is not available the Group A, B, C & D are entitled to House Rent Allowance plus licence fee in lieu of rent free accommodation. Thus the gravamen of the defence is that since the applicants are not persons eligible to get the benefit at Dimapur they do admit that in lieu of rent free accommodation where it is not provided House Rent Allowance plus licence fee would be payable in lieu thereof.

(c) Arguments of Mr. Trikha and Mr. Ali have been heard.

4. Facts in O.A. 2 of 1994.

(a) All India Postal Employees Union Postmen (III) and Extra Departmental Agents and the All India Postal Employees Union Postmen Class (IV) and Extra Departmental Kohima Branch are espousing the cause of Group C and Group D employees of Postal Department posted throughout Nagaland Division, in this application. Their grievance is the same, namely, that they are entitled to rent free accommodation or compensation in lieu thereof with House Rent Allowance @ applicable to B Class Cities but the respondents are denying to extend that benefit to them and have not responded to their representations. Additionally their grievance is that although between January 1974 and December 1979 they were paid House Rent Allowance @ 15% of pay plus Additional House Rent Allowance @ 10% of their pay that has been illegally reduced to 7.5% from 1.5.1980. They rely on self-same material as relied upon by the applicants in the companion cases and

Heard
&
Adm. Case

Advocate

te of licence fee was revised.

7. - 18 - 20 - 32

their contentions are also the same. They pray similarly for a declaration that all the employees of Postal Department posted in Nagaland are entitled to House Rent Allowance applicable to Central Government Employees posted in 'B' Class Cities with effect from 1.10.1986 and for a direction to the respondents to release the same accordingly with effect from 1.10.1986.

(b) The respondents have filed a common written statement and the contentions raised are similar as in companion cases. They deny the claim. They inter alia contend that the staff of P & T Department is not eligible to the benefit claimed.

(c) Arguments of Mr. B.K.Sharma and Mr. G.Sarma, Addl.C.G.S.C. have been heard.

5. Facts in O.A. 11/95.

This application has been filed by the Nagaland Census Employees' Association for and on behalf of Group C & D employees of Census Operation, posted in Nagaland. Their contentions are similar to these made by the applicants in O.A. 48/91. They rely on certain additional material as they have approached the Tribunal in 1995 whereas the other O.A. was filed in 1991. These applicants state that by virtue of the Presidential Order issued on 8.1.62 the cities in the State of Nagaland are equated to cities which have been classified as 'B' Class cities for the purpose of payment of House Rent Allowance and it is still operative and entitles the applicant employees the benefit of House Rent Allowance. They further state that the State of Nagaland is considered to be a difficult area for the purpose of rented accommodation. The employees posted in the State are therefore entitled to rent free accommodation or House Rent Allowance in lieu thereof applicable to 'B' Class cities. The applica

Attested

Advocate.

: 8 : ~~19~~ - 21 - 3

also point out that in view of the Arbitration Award which held that employees of the Directorate of Census Operations posted in Nagaland are entitled to get House Rent Allowance and personal allowance at the same rate as that of employees of Post & Telegraph Department from 1.5.1976 and although pursuant thereto respondents have been paying the House Rent Allowance that is being paid at the rate meant for 'C' Class cities they have denied payment at the rate meant for 'B' Class Cities to which they are entitled. They also make a grievance that a differential treatment is being given to them in denying that benefit whereas Central Government employees in other departments have been given that benefit. They contend that all Central Government Employees posted in Nagaland are entitled to House Rent Allowance at the rate admissible to B-Class cities and they are also entitled to compensation in lieu of rent free accommodation. The applicants state that they have filed representations to the respondents but have received no response hence they have approached the Tribunal for relief. They pray for a declaration to the effect that all Group 'C' and 'D' employees of the Directorate of Census Operation posted in Nagaland are entitled to House Rent Allowance as well as compensation in lieu of Rent Free Accommodation applicable to the Central Government Employees posted in B Class cities with effect from 1.10.1986 and for a direction to the respondents to release to them House Rent Allowance @ 15% and compensation in lieu of rent free accommodation with effect from 1.10.1986.

(b) The respondents by a common written statement resist the application. Their contentions interalia are as follows:

1. There is no provision for providing rent free accommodation to employees of Directorate of Census Operations, Nagaland.

- ii. For Government accommodation the employees/occupants are supposed to pay licence fee hence it cannot be termed as rent free accommodation.
- iii. House Rent Allowance is being paid according to pay slab of the individual employees as per rules and there is no special order issued for payment at higher rate.
- iv. The applicants cannot compare themselves with other departments where higher House Rent Allowance may have been paid looking to the nature of duties and responsibilities under different working conditions. Likewise essential services cannot be equated with non-essential services. Thus applicants are not similarly circumstanced employees.

(c) The thrust of the defence therefore is to say that applicants are not eligible for rent free accommodation and it is not disputed that on being found to be eligible to the same they would be entitled to the prescribed compensation in lieu of the rent free accommodation.

(d) Arguments of Mr. B.K.Sharma and Mr. G.Sharma, Addl. C.G.S.C. have been heard.

Facts in O.A. 37/95

(a) The 127 applicants are employees of Subsidiary Intelligence Bureau posted in the State of Nagaland. Applicants at serial Nos. 1, 2, 4, 13, 18, 33, 56, 62, 70, 76, 79, 80, 105 and 124 are Group 'B' (non-gazetted) employees and others are Group 'C' & 'D' employees. They pray for a declaration to the effect that they are entitled to House Rent Allowance and compensation in lieu of Rent Free Accommodation at the rate applicable to Central Government Employees posted in 'B' Class cities with effect from 1.10.1966 and for a direction to the respondents to release the House Rent Allowance

Attested

Advocate.

Attested
Advocate

- 21 -
107 23 -
35

to them accordingly @ 15% and compensation in lieu of rent free accommodation with effect from 1.10.1986. They contend that cities in Nagaland are declared 'B' Class Cities and they are entitled to be given rent free accommodation or compensation in lieu thereof. They rely on the Presidential Order dated 8.1.62, the O.M. dated 23.9.86, the recommendation of 4th Pay Commission, the Arbitration Award relating to employees in Directorate of Census Operations who are similarly placed, the judgement in O.A. 42/89 alongwith the Supreme Court decision therein and the circumstance of the benefit extended to employees in other departments of Central Government and also point out that their representations have not yet been replied. Their submissions are the same as in the other O.A.s.

(b) The respondents have filed their written Statement.

They oppose the application. It is contended that Kohima & Dimapur in Nagaland are the only cities which are classified as 'C' Class Cities and rest of the Nagaland is unclassified and therefore the claim of applicants for House Rent Allowance at the rate payable to Central Government Employees in 'B' Class Cities is untenable. Other contentions are on the same lines as in companion O.A.s.

(c) Arguments of Mr. B.K.Sharma and Mr. G.Sarma, Addl. C.G.S.C have been heard.

7. Facts in O.A. 105/95.

(a) This application has been filed on behalf of 47 Group C and D employees working under the Director, Geological Survey of India, Operation Manipur-Nagaland at Dimapur. They were not parties to O.A. 42-^{48 of 91}(6)/89 although similarly placed with those applicants and their grievance is that they are not being given benefit of

Attested
NDA
Advocate.

- 22 -

24 -

36

the order in that O.A. on the ground that they were not parties and that they are entitled to get House Rent Allowance applicable to 'B' Class Cities @ 15% and also compensation @ 10% in lieu of Rent free accommodation. They claim to be entitled to such accommodation. Their representations have not brought them relief hence they have approached the Tribunal. They have raised contentions similar to these as have been raised by the applicants in the other companion O.A.s. They pray for an order for payment of House Rent Allowance at B-2 Class City rate with effect from 1.10.86 to the staff in Group C and D by extending the benefit of judgement and order in the earlier O.A. They also rely on the (pre-review) decision in O.A. 48/91.

(b) Although respondents could not file written statement so far we have permitted Mr. G.Sarma, the learned Addl. C.G.S.C. to make his submissions on instructions as may have been received and the learned counsel adopts the contentions urged by the

respondents in their written statement in answer to O. A. 48/91.

(c) Arguments of Mr. B.K.Sharma and Mr. G.Sarma, Addl. C.G.S.C. have been heard.

8. The points that arise in all these applications for consideration in common are as follows :

1. Whether the applicants in the respective O.A.s are eligible to of Re accommodation ?
- ii. What are the components the compensation payable in lieu of the rent free accommodation where it is not made available and what quantum.
- iii. Whether the licence fee of the components of compensation is payable @ 10% of pay ?

iv. Whether HRA (as component of the compensation) is payable @ 15% of pay ?

v. Whether HRA otherwise is payable @ 15% ?

vi. From what date above payments are applicable ?

vii. Whether applicants are being given differential treatment vis-a-vis other Central Government Departments ?

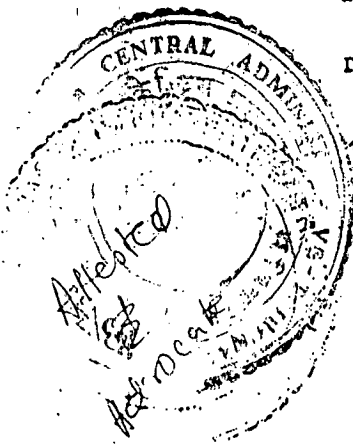
viii. What relief, if any ?

9. Since all the applications raise same points we shall deal with the entire material relied upon in all these cases together and also deal with submissions of learned counsel appearing for respective applicants and the respondents in the respective applications together. Our answers to above points are as indicated in the concluding part of this order for the reasons that follow.

10. Reasons :

It will be convenient to take a note of relevant Memoranda, Orders and Circulars issued by the Govt. of India from time to time in regard to providing rent free accommodation or compensation in lieu thereof in the first instance and then to take a note of the decisions cited before proceeding to examine the claim of the respective applicants.

11. Mr. S. All the learned Sr. C.G.S.C. representing Union of India in all these cases has strongly relied upon an old O.M. G.I. M.H. & W. with O.M. No. 12-11/60 Acc I, dated 2nd August, 1960 and contends that it is still in operation and holds the field. It was not brought to the notice of the Tribunal either in O.A. 42/91 or O.A. 2/94 or O.A. 48/91. It was produced in review application No. 12/94 in O.A. No. 48/91 for the first time (wrongly mentioning a 12-11/63 Acc I though copy annexed shows it as 12-11/60). Now as so many proceedings the respondents cannot describe it as a new



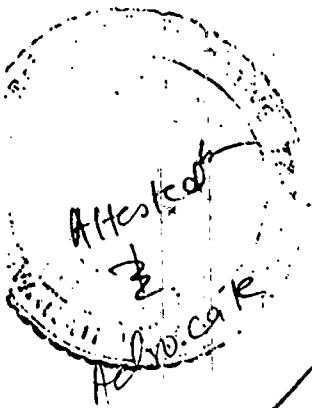
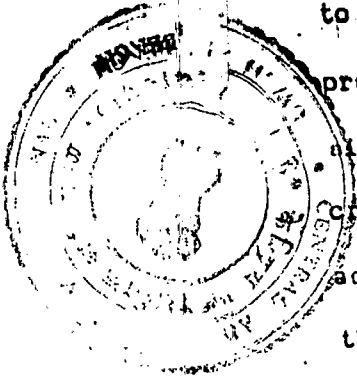
Attested
Advocate.

discovery of evidence. That is laying premium on the lapse of the Departments concerned or laches on their part. However, as it goes to the root of the matter according to Mr. Ali and as several employees of various departments are concerned and a vexed question is involved we have permitted to refer to it.

12. That O.M. restricts the concession of rent free accommodation only to a limited class of employees who are required to reside in the campus or in the vicinity of places of work where their presence on duty is essential and does not confer that benefit generally on all the employees. ~~posted in Nagaland (or N.E. Region).~~ It is submitted by Mr. Ali that the O.M. dated 23.9.86 and the clarificatory letter dated 13.11.87 on which all the applicants have based their claim are to be read and understood as applicable to only those employees who fall within the ambit of criteria prescribed by the aforesaid O.M. (12-11/60 Acc-I dated 2.8.60) and

since none of the applicants have stated that they fulfil the criteria of that O.M. they are not eligible to get rent free accommodation or compensation in lieu thereof. He submits that their claim all along has been based on a wrong assumption and as they are not at all eligible for the concession of rent free accommodation the entire edifice of their claim must fall down and as the earlier decisions were based upon erroneous hypothesis these cannot confer a right upon the applicants to get the benefit as they were never eligible for the same. These arguments have also been adopted by Mr. G. Sarma the learned Addl. C.G.S.C. Thus question of eligibility has been raised.

13. The Office Memorandum No. 11013/2/86-E-11(8) dated 23.9.86 was issued consequent upon the recommendations of the Fourth Pay Commission containing the decision of the Govt. of India relating



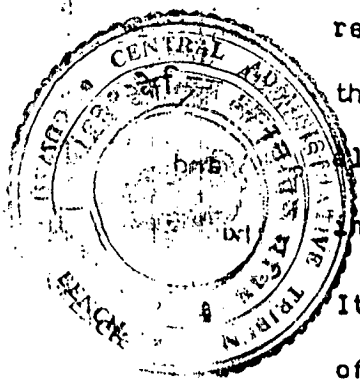
Attested

Adm.

Advocate

to grant of compensatory (City) and House Rent Allowance to Central Government Employees. It recites that the President of India was pleased to decide in modification of the Ministry's (Ministry of Finance, Department of Expenditure) O.M. No. F 2(37)-E-II (B) 64 dated 27.11.65 as amended from time to time for the Compensatory (City) and House Rent Allowances to Central Government Employees to be admissible at rates mentioned therein.

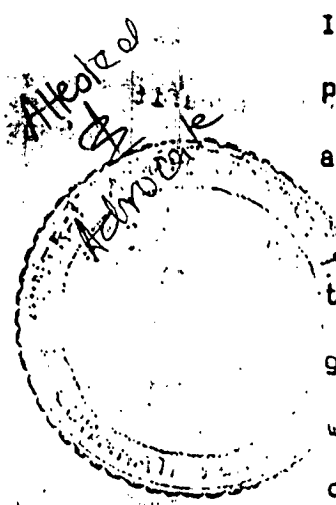
14. Under the above O.M. (dated 23.9.86) a slab-wise rate of House Rent Allowance was prescribed in place of percentage basis and (in so far as material here) it was provided that the House Rent Allowance at these rates shall be paid to all employees (other than those provided with Govt. owned/hired accommodation) without requiring them to produce rent receipts etc. It further provided that where House Rent Allowance at 15 percent of pay has been allowed under special orders, the same shall be given as admissible in A, B-1 and B-2 Class Cities.



It further provided that these orders will apply to civilian employees of the Central Government belonging to Groups B, C & D only and shall be effective from 1.10.86.

15. It is necessary to understand the true impact of this O.M. It clearly deals only with the quantum of House Rent Allowance payable from 1.10.86 to all Central Government employees in A, B-1 and B-2 Class cities and does not refer to compensation payable in lieu of house rent accommodation where such accommodation is required to be provided. It does not make any reference to eligibility for getting that concession. The words "Other than those provided with Govt. owned/hired accommodation" make it inapplicable to that category of employees who are provided with rent free accommodation.

The claim of the applicant based on the basis of this Memorandum appears to be misconceived to the extent House Rent Allowance is



Attested
[Signature]
Advocate.

claimed as a component of compensation in lieu of rent free accommodation. With this nature of the O.M. there is obviously no reference in it to the O.M. dated 2.8.60 (12-11/60 Acc 1).

The respondents however have not chosen to produce the Resolution No. 14(1)/IC/86 dated 13.9.86 or O.M. No. F 2937)-E-11(8)/64 dated 27.11.65 to enlighten us whether these refer to O.M. dated 2.8.60. We cannot therefore assume that these refer to the aforesaid O.M. dated 2.8.60.

16. The claim of the applicants has to be clearly understood. It is for compensation in lieu of rent free accommodation on the hypothesis that they are entitled to it. It is the O.M. (12-11/60) dated 2.8.60 which provides for the compensation consisting of 2 components namely :

1. Licence fee @ 10% and
2. House Rent Allowance (at prescribed rate).-

subject however to the eligibility criteria prescribed therein. As far as House Rent Allowance is concerned the concept has to be understood in two different ways. One, as House Rent Allowance payable to all Central Govt. Employees except those who are eligible for rent free accommodation and two, as one of the components of compensation payable in lieu of rent free accommodation where such accommodation is not made available. It will however be rational to say that the rate of House Rent Allowance payable as part of compensation should also be the same as prescribed for all civilian employees from time to time such as under the O.M. dated 23.9.86. The applicants however have confused between the rate of House Rent Allowance as payable and eligibility to get compensation of which House Rent Allowance is one of the components. As a result of this confusion they have laid much emphasis on the payment of House Rent Allowance and its rate and have

Attested

WDM

Advocate.

- 27 - 16 29 - 4

not clearly shown as to under what specific rule or O.M. or decision of the Government all of them can claim the compensation in lieu of rent free accommodation.

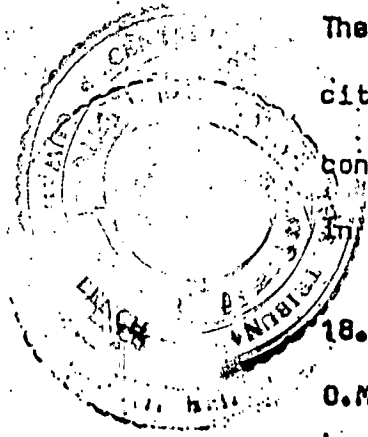
17. The applicants rely upon O.M. No. 2(22)-E-II(B) 60 dated 2.8.60 issued by the President of India in respect of P & T staff and O.M. 41-17-61 dated 8.1.62 as the basis to contend that they are entitled to rent free accommodation as it is provided as a concession to the employees posted in Nagaland which is regarded a difficult area.

O.M. 2(22)-E-II(B) 60 dated 2.8.60 containing the order of the President of India applicable to P & T staff working in NEFA and NHTA - on the subject of revision of allowances, same provided in Clause (1) (iii) as follows :

"Rent free accommodation on a scale approved by the local administration, the P & T staff in NHTA, who are not provided with rent free accommodation, will however draw HRA in lieu thereof at the rates applicable in 'B' class cities contained in Col. 4 of paragraph I of the Ministry of Finance O.M. No. 2(22)-E-II(B)/60 dated 2.8.60".

The O.M. 41-17/61 dated 8.1.62 continued the HRA at rates of B Class cities. It is contended by the respondents in O.A. 2/94 that these concessions were sanctioned to the staff of P & T Department posted in NEFA and NHTA only.

18. As stated earlier the respondents rely upon G.I. M.H & W O.M. No. 12-11/60-Acc-I also dated 2.8.60. It stated that the position as regards the criteria laid down in O.M. dated 26.11.49 and August 1950 for grant of rent free accommodation has been reviewed in the light of observations made by 2nd Pay Commission and it has been decided that ^{where} ~~where~~ for the efficient discharge of duties it is necessary that an employee should live in or near the premises where he works it would be desirable that he should be provided with a Govt. residence which should be rent free or rent recovered at



Attended
Advocate

Advocate
18/11/60

- 28 - 42
30 -

reduced rates only if the nature of his duties or conditions under which they have to be performed are such that a higher scale of pay or special pay etc. would be granted but for the concession of rent free accommodation or recovery of rent at reduced rates. This O.M. was produced in Review Application 12/94 but in the body of the Review Application only a truncated portion was mentioned which gives a misleading impression.

19. Now although this O.M. (12-11/60-Acc-I) was issued on the same day on which O.M. 2(22)EII-B-60 was issued it is apparent on a plain reading of these two that these related to different subjects and did not cover the same field. Whereas the earlier one refers to cases where the concession of rent free accommodation is given to those for whom it is obligatory to stay at the office premises the latter conferred that benefit on all employees of P & T Department posted in Nagaland. The 1st O.M. however by itself does not conclusively show that such concession was not available to other employees also. That it could be so can be seen from the latter O.M. that was issued in respect of P & T staff in NHTA. Much ^{water} was however has flown since 1962.

20. The quest has therefore to be still continued to locate the right of the applicants to get this concession.

21. Notification No. 11015/4/86-E-II(B) dated 19.2.87 revised the earlier Memoranda on the basis of 4th Pay Commissions' recommendations accepted by the Govt. on the subject of grant of compensation in lieu of rent free accommodation to Central Govt. employees belonging to Groups 'B' 'C' and 'D' as were applicable from 1.10.86 and the President was pleased to decide that these employees working in various classified and unclassified cities will be entitled to compensation in lieu of rent free accommodation with effect from 1.1.86 as under :

Altered
Advocate

11015/4/86-E-II(B)
11015/4/86-E-II(B)

31 18

42

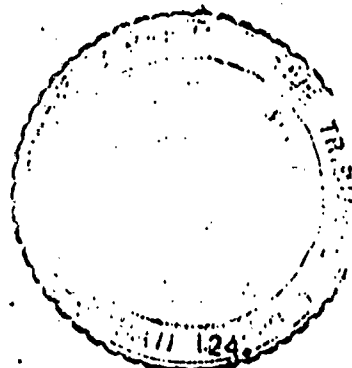
- (i) Amount charged as licence fee for Government accommodation from employees similarly placed but not entitled to rent free quarters; and
- (ii) House Rent Allowance admissible to corresponding employees in that classified city/unclassified place in terms of the orders, dated 23.9.1986.

22. The note below clause 2 provided that for the purpose of these orders the amount charged as licence fee for Government accommodation will be taken as 10% of the monthly emoluments (7½% in the case of employees drawing pay below Rs. 470) calculated with reference to 'Pay' in the pre-revised scales that they are drawing they would have drawn but for their option, if any for the revised scales of pay.



Under Clause 3 'Pay' for the purpose of House Rent Allowance component of compensation was to be 'Pay' as defined in 9(21)(a)(1).

23. The above mentioned orders however have to be read subject to Clause 6 which stated;



" These orders will apply only to the incumbents of posts which have been specifically made eligible for the concession of rent free accommodation under Government orders issued with reference to para 2 of Ministry of Works and Housing and Supply's O.M. No. 12/11/60/ACC-I dated the 2nd August, 1960".

The note thus restricts the concession only to those employees for whom

for the efficient discharge of duties it is necessary to live on or near the premises where they work, and should be provided with a Govt. residence rent free.

The respondents therefore deny the claim of the applicants.

Attested & Advocate

Attested
[Signature]
Advocate.

25. The above O.M. was followed by Ministry of Finance O.M. No. 11015/4/86-E-11(B) dated 13.11.87 relating to 'compensation in lieu of rent free accommodation' effective from 1.7.1987. It stated that the President was pleased to decide that Central Govt. Employees belonging to Group A, B, C and D working in various classified cities/unclassified places will be entitled to compensation in lieu of rent free accommodation as under :

- (i) Amount charged as licence fee for Government accommodation as fixed in terms of Ministry of Urban Development (Directorate of Estates)'s O.M. dated 7.8.87, and
- (ii) House Rent Allowance admissible to corresponding employees in that classified city/unclassified city in terms of para 1 of O.M.s dated 23.9.86 and 19.3.87.

By the aforesaid O.M. dated 7.8.87 flat rate of licence fee was introduced on the recommendation of 4th Pay Commission for residential accommodation all over the country. By Fundamental (Amendment) Rules 1987 the Fundamental Rule 45A was correspondingly amended.

26. What is however crucial is that Clause 2 of the O.M. dated 13.11.87 provided as follows :

"Other terms and conditions for admissibility of compensation in lieu of rent-free accommodation indicated in the Ministry's O.M. dated 19.2.87 and 22.5.87 remain the same".

It therefore means that by virtue of Clause 6 of the O.M. dated 19.2.87 which applied to B, C & D Group employees the concession is confined to only those employees who are eligible to rent free Government accommodation under O.M. 12/11/60/ACC-I dated 2.8.60. The Government

India thus did not depart from the criteria as was laid down way

*Attested
USAs
Advocate.*

*Attested
Advocate*

back in 1960 and in the absence of any relief sought to compel the Government to extend the benefit of the recommendation to all the employees in B, C & D Group posted in Nagaland the criteria so prescribed could be applicable for determining the eligibility for earning the compensation in lieu of the rent free accommodation. That would mean that all the ^{B,} C & D Group employees would not automatically be entitled to get it but only those falling in the limited class for whom the concession was meant would be eligible to claim it.

28. It must however be held that where independently of these O.N.s the concession of rent free accommodation is made available to all the employees then this restriction would not be valid being inconsistent with that provision. However no such provision has been brought to our notice. At the same time it is important to note that the respondents have admitted at some places that such concession is being given to all the employees. That has complicated the issue which by itself requires involved process to know exactly as to what is the true position. In this context we may refer to the written statement filed by the respondents (Subsidiary Intelligence Bureau - Ministry of Home Affairs) in O.A. 37/95. It is stated thus :

" at the time of Nagaland Hill Tuensang Area (NHTA) was carved out from Assam, the employees of NHTA administration were allowed the concession of rent free accommodation or HRA in lieu thereof as an incentive to attract suitable persons from outside for serving in this difficult tribal area. The benefit was subsequently, extended to other Central Govt. employees also".

Attested
by
Adm. Secy

Attested
by
Adm. Secy

Para 8 : ".....Out of 157 group C and D officers posted at Kohima as many as 54 officers have been allotted Govt. accommodation of type-I, II, and III which would speak about the allotment of accommodation".

Para 9 : " As a matter of fact, all group C and D employees who are not allotted any Govt. accommodation are being paid HRA plus Licence Fee as is admissible to I B employees at Kohima @ 'C' class only"

(Underlined by us)

29.

These statements indicate that the compensation (composed of licence fee plus HRA) is being paid which means the criteria of the U.M. dated 2.8.60 is not treated as applicable (to SIB under Home Ministry). At the same time it is contended in the written statement filed in O.A. 48/91 (Geological Survey of India, Ministry of Steel and Mines) that there are no instructions from the Ministry of Home Affairs that Central Govt. Employees posted at Dimapur are entitled to rent free accommodation. In written statement in O.A. 11/95 (Directorate of Census Operations - Ministry of Home Affairs) it is stated that there is no provision for providing rent free accommodation to employees of Directorate of Census Operations, Nagaland, Kohima.

(This stand and stand in O.A. 37/95 of the Home Ministry do not appear consistent and it leads to the inference that different departments are understanding the position differently and the situation is wholly confused). In O.A. 2/94 (the Department of Posts, Ministry of Communications) it is negatively stated that the allowances and concessions were sanctioned to the staff of P & T Department posted in NEFA and NHITA only implying thereby that other employees were not entitled to get the same.

30.

Much emphasis has been laid by the applicants on the fact that all cities in Nagaland are 'B' class cities and HRA has to be paid at the rate payable for B class cities. Here also confusion

Attested
Advocate

Attested

Advocate

- 35 -

persists between entitlement for compensation in lieu of rent free accommodation (Composed of licence fee plus HRA) and the rate of HRA payable otherwise than as the component of compensation and under general conditions of employment.

31. The position in this respect would be as follows :

- i. Where Govt. accommodation free of charge or rent is provided
- ii. Where such accommodation is provided on payment of licence fee by the employee to the Govt
- iii. Where compensation is paid in lieu of rent free accommodation by the Govt to the employee where such accommodation is not made available and
- iv. Where no Govt. accommodation is allottable incidental to service in which case HRA is paid by Govt. to the employee at rates prescribed from time to time and regulated by the relevant F.R.

32.

The applicants have linked their claim to the cities in Nagaland being considered B class cities. Ministry of Finance O.M. No. 2(2)/93-E II (B) dated 14.5.93 refers to Ministry of Finance O.M. No. 11016/5/82-E II (B) dated 7.2. 83 as amended from time to time as containing the list of cities/towns classified as 'A', 'B-1', 'B-2' and 'C' class for the purpose of grant of HRA/CCA to Central Govt. employees. By the aforesaid O.M. (dated 14.5.93) a re-classification was introduced on the basis of 1991 Census. The new classification became effective from 1.3.91. It shows that only Kohima and Dimapur in Nagaland have been classified as class 'C' towns. Hence according to the respondents (in O.A. 37/95 (SIB)) other places in Nagaland are unclassified. The position prior thereto was governed by earlier orders of the Govt. of India.

Heated & Amok

Advocate

33. The applicants in (O.A. 11/95) rely upon O.M. No. 11015/4/86-E-II(8) dated 13.11.87. The applicants in O.A. 2/94 (Postal Department) rely upon Memo No. 41-17-61 dated 8.1.62. That provided that HRA in lieu of rent free accommodation will be payable at the rate payable to 'B' class cities contained in O.M. 2(22)-E-II(8)/60 dated 2.8.60. The applicants in O.A. 48/91 (Geological Survey of India) also rely upon the aforesaid O.M. 2(22)-E-II(8)/60 dated 2.8.60. Besides they also rely upon O.M. 11013/2/86 dated 23.9.86 (already referred to). They state that from 1.11.79 to 30.11.79 they were allowed HRA @ 25% but it was wholly withdrawn between 1.8.75 to 31.10.79. Later between 1.12.79 to 6.1.81 HRA was allowed at 7½% between 7.1.81 and 31.12.85 and from 1.1.86 they were paid at the rate applicable to 'C' class cities. According to them it should be admissible as for 'B' class cities.

34. The contentions based upon the various O.M.s noted above show that the applicants are confusing between HRA payable as component of compensation in lieu of rent free accommodation and HRA otherwise payable. As seen earlier the O.M.s dated 23.9.86 read with O.M. 12-11/60 dated 2.8.60 are relating to compensation and any grievance about the rate of HRA as part thereof can be made only by those who fulfill the criteria for eligibility to get the HRA. The applicants however have not produced any O.M. declaring all towns including Kohima and Dimapur as 'B' class cities even after the 4th Pay Commissions' report as from 1.1.1986 or after 1991 Census.

35. The applicants seek to draw support from the below mentioned decisions :

1. (S.K. Ghosh & Ors Vs. Union of India & Ors.)
O.A. 42(G)89 dated 31.10.90 CAT Guwahati Bench
It related to Post & Telecommunication Department.
The Bench referred to the provision for payment of HRA in lieu of rent free accommodation based on

Attested
Advocate

Attested
Advocate

49

-28-
24 37-

order dated 8.1.62 and noticing that the reduction in payment from 15% to 7½% observed that:

"Since Nagaland was considered as a difficult area from the point of view of availability of rented house, all P & T employees posted there either got rent free quarters or, where such quarter could not be provided by the Government, were given houses at the rate applicable to 'B' class cities."

36. It was therefore held that the applicants (therein) were entitled to HRA applicable to Central Govt. employees posted in 'B' class cities which includes classifications B-1 and B-2. This part of the decision has been confirmed by the Hon'ble Supreme Court as discussed below. It is not therefore open to us to express any opinion differently.

(2) Pre-review decision in O.A. 48/91 decided on 26.11.93.

The view taken at that stage was based on the decision in O.A. 42/89 (supra) and relating to compensation. The decision mainly dealt with varying rates at which HRA was paid over the years but does not notice the distinction between payment of HRA generally and as part of compensation in lieu of rent free accommodation. The decision however could be read in the context of the Supreme Court decision arising out of O.A. 42/G/89 (supra).

37. We may now turn to the judgment of the Hon'ble Supreme Court in Union of India V/S S.K. Ghosh & Ors. (Civil Appeal 2705 of 1991) decided on 18.2.93 (which was the appeal filed against the

Attested
Advocate

Attested
Advocate

order of the Tribunal in O.A. No. 42/89). The decision does not help the respondents but concludes the issue in favour of the applicants. It is submitted by the respondents in R.A. 25/94 (Postal Department) generally that the "Hon'ble Supreme Court did not mention in its' judgement about compensatory allowance and as such claim for that portion i.e. compensation @ 10% of monthly emoluments with effect from 1.7.1987 in lieu of rent free accommodation" is not tenable at all.

38. We have endeavoured in the course of above discussion to highlight the difference between payment of compensation in lieu of rent free accommodation which contains HRA as ^{one} are of its components and rate of HRA payable otherwise than as part of the compensation. The judgement of the Hon'ble Supreme Court does not refer to the O.M. No. 12-11/60-ACC-I dated 2.8.60 and apparently it was not brought to the notice of Their Lordships. That O.M. which is now pressed into service leads to creating two different situations. Whatever that might be the decision is binding as to the rate of HRA. The material observations are as follows :

"The cities in the State of Nagaland have not been classified and as such the general order prescribing House Rent Allowance for different classes of cities could not be made applicable to the State of Nagaland. It was under these circumstances that the President of India issued an order dated January 8, 1962 granting House Rent Allowance to the P & T staff posted in the State of Nagaland".

After quoting Clause 1(iii) of the order which refers to O.M. 2(22)-E-11/6/60 dated 2nd August 1960 their Lordships proceeded to observe thus :

"It is clear from the order quoted above that the P & T employees posted in the State of Nagaland are entitled to rent free accommodation or in the

Attested
2
Advocate

Don

alternative to the House Rent Allowance at the rates applicable in 'B' class cities. The Presidential Order equates the cities in the State of Nagaland for the purposes of payment of House Rent Allowance to the cities which have been classified as 'B' class".

And further;

" the question for our consideration is whether the respondents are entitled to the House Rent Allowance as provided for 'B' class cities by the IVth Central Pay Commission recommendations which were conferred with effect from October 1, 1986.

It is not disputed that the Presidential Order dated January 8, 1962 is still operative. We are of the view that the State of Nagaland having been equated to 'B' class cities by the Presidential Order the respondents are entitled to be paid the House Rent Allowance at the rates which have been prescribed for the Central Government employees posted in 'B' class cities. Accordingly, the respondents are entitled to be paid House Rent Allowance at the rate which has been prescribed by the IVth Central Pay Commission recommendations for 'B' class cities".

(Emphasis supplied)

With the above pronouncement of the Hon'ble Supreme Court it is not open to the respondents to contend that the cities in Nagaland are not declared 'B' class cities or that Kohima and Dimapur are only 'C' class cities or to contend that therefore the applicants are not eligible to claim HRA at the rate prescribed for 'B' class cities.

41.

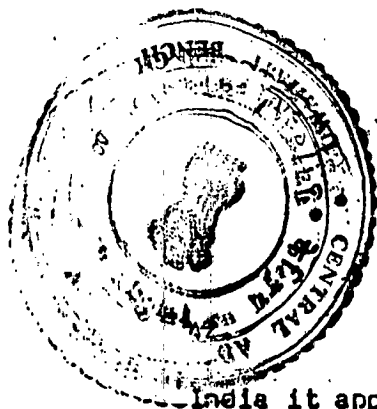
In our view, with respect, the ratio of the decision of the Supreme Court cannot be read as relating to P & T employees only. The observations underlined in the passages quoted above from the judgement clearly show that the view expressed that the cities in the State of Nagaland for the purposes of payment of House Rent Allowance have been equated to the cities which have been classified as 'B' class

Attested

Advocate.

cities would apply to all Central Government employees posted in the State of Nagaland irrespective of the department to which they belong. Indeed construing it differently would lead to employees in departments other than the P & T Department being differently treated from employees of P & T Department. Such a situation cannot be contemplated. In view of Articles 14 & 16 of the Constitution. It is useful in this context to refer to Annexure-8 in O.A. 37/95 (SIB) which is a copy of Memorandum from the Assistant Director, SIB Kohima to Assistant Director/EP, IB Hqrs., New Delhi dated 27.3.94 in which in the context of the judgement of the Supreme Court and the Arbitration Award (amongst various orders) a opinion has been expressed as follows :

"In view of the Award of Board of Arbitration referred to in para-2 above, Hon'ble Supreme Court's judgement and its implementation by the P & T Department to all employees without any prejudice to petitioners and non-petitioners which has added new angle to the case, it is requested that the case may please be taken up with MHA/Ministry of Finance to extend the benefits to IB personnel also posted in Nagaland at par with P & T employees on priority basis



Although the opinion is not binding on the Govt. of India it appears to us to be based on correct approach and sound.

The respondents in the same O.A. have produced a copy of O.M. No. 2(2)93-E-II(B) dated 14.5.93 (also referred earlier) issued by the Ministry of Finance (Department of Expenditure), Government of India laying down the Re-classification of cities/towns on the basis of 1991 Census for the purposes of grant of House Rent Allowance (and CCA) to Central Government Employees. List II annexed thereto classifies only two cities in the State of Nagaland namely Kohima and Dimapur and these are classified as 'C' class cities. Rest of the

Alleged
Advocate

Alleged
Advocate

~~29~~ - 41 -

cities and towns would thus fall in unclassified category. However, this classification prescribed for State of Nataland being contrary to the judgement of the Hon'ble Supreme Court (supra) it cannot prevail and the O.M. has to be looked upon as ineffective during the period prior to the date of its issue since in our opinion the decision of the Supreme Court would be applicable only to those Govt. orders^{as} were operating when that O.A. (42/G/89) was filed and till those order were changed by the Govt. of India.

43. Thus we hold that the applicants though have not claimed that they fulfil the eligibility criteria under O.M. No. 12-11/60 dated 2.8.60 still they are entitled to get House Rent Allowance at the rate prescribed for 'B' class cities to the Central Government employees. It will be payable at the rate of 15% from 1.1.1986 to 30.9.86 and from 1.10.1986 at flat rate prescribed under O.M. dated 7.8.87 (read with O.M. dated 13.11.87 supra) read with Notification GSR No. 623 (E) amending the Fundamental Rule 45A with effect from 1.7.1987.

44. We now turn to the topic of compensation.

45. On the question of payment of compensation in lieu of rent free accommodation also in our view, with respect, the judgement of the Hon'ble Supreme Court (supra) must be held binding and therefore despite our view expressed in the foregoing discussion that the O.A. 12-11/60 dated 2.8.60 is not superseded and ordinarily the compensation would be payable only to those who fall within the eligibility criteria thereunder; that cannot be adopted or applied for the following reasons :

46. In order to understand the ratio of the Supreme Court decision, since it was rendered on appeal against the decision of this Tribunal which is confirmed except the modification as regards arrears to be paid, it will be necessary to note

Accepted & Approved

W.D.

42

: 29 :

the nature of claim made in that O.A. and the finding of this Tribunal.

47. The case of the applicants (in O.A. 42/89) on the point as stated in the application was as follows :

Para 4(a) "That while the plaintiffs are posted in the State of Nagaland, they are entitled to Rent-free accommodation under the orders of the Ministry of Finance, Union of India, New Delhi

Para 4(b) That where the Government servants, entitled to rent free accommodation not provided house/quarter by the Government, the rate of House Rent Allowance to such employees was being regulated vide Director General, Post & Telegraph letter No. 41-177/61 P & A dated 8.1.62. Such category of staff while posted in Nagaland were not entitled to get House Rent Allowance at the rate applicable to employees posted in 'B' class cities".

Para 4(c) That when such employees were thus allowed and drawing the House Rent Allowance at par with employees posted to 'B' class cities some orders contradictory to each other were issued by various respondents on various dates

Para 4(d) The Govt. of Nagaland vide their Office Memorandum No. FIN/ROP/45/75 dated 16.8.75 has allowed their employees belonging to the category in which the applicants fall, House Rent Allowance at the rate ..
..... which rate is higher admissible to the employees of even the 'B' class cities
the other Central offices located in Nagaland are also allowing the increased rate of House Rent Allowance when employees of such departments are posted in Nagaland.

Attested

Attested

Advocate.

43-
: 30 :

Para 5 (a) The Government of India and the other Respondents have themselves agreed in the past that the employees placed in this category (i.e. entitled to free accommodation and not provided with accommodation in Nagaland) shall be given the House Rent Allowance at par with 'B' class cities.

With these main averments they sought the following relief :

"All the employees when posted in Nagaland, who are entitled to rent-free accommodation and the same is not provided for by the Government be allowed to draw the House Rent Allowance as is admissible to the employees posted in 'B' class cities as categorised in the Government of India letter No. 11013/2/86-E.II(B) dated 23.9.86".

(Emphasis supplied)

The same was claimed with effect from May 1980 onwards.

48. It would appear from the above nature of their pleadings that the claim for House Rent Allowance at the rate of 'B' class cities was made on the assumption that all the employees posted in Nagaland were entitled to rent free accommodation or compensation in lieu thereof and their grievance was as regards the rate of House Rent Allowance as one of the components of compensation in lieu of rent free accommodation. If the G.I.M.H & W O.M. No. 12-11/60-ACC-I dated 2.8.60 is kept in view then clearly the whole basis of the claim was wrong. The O.A. was filed by 107 P & T employees but it was not stated in the application that all or any of them fulfilled the eligibility criteria prescribed thereunder. Even so the respondents (in that case) did not deny categorically that all the employees posted in Nagaland were not eligible for rent free accommodation or

Advocate

compensation in lieu thereof when the tenor of the application was to aver that all Central Government employees posted in Nagaland were eligible for the same. Worse still the respondents neither produced nor relied upon the above mentioned O.A. (12-11/60) dated 2.8.60.

49. It would be interesting to note the material statements made in the written statement (in that case) by the respondents which are set out below :

Para 2 "respondents beg to state that as per the D.G. P & T letter No. 41-17/61 P & A dated 8.1.62 the P & T staff posted in NHTA (now renamed as Nagaland) are entitled to rent free accommodation."

Para 3 ".....the payment of HRA to P & T staff in lieu of rent free accommodation was regulated upto April, 1980 as per above letter dated 8.1.62".

Para 4 "The Govt. of India vide orders have revised the rate of HRA admissible in lieu of rent free accommodation with effect from May, 1980.

Para 12 "the respondents beg to state that the P & T staff posted in Nagaland are being paid the HRA in lieu of rent free accommodation correctly at the rate fixed by the Govt. of India".

(Underlines supplied)

The anxiety of the respondents was thus to justify the rate of HRA that was being paid and which was disputed by the applicants and in that process they did not dispute rather - accepted the position that all the applicants (P & T staff) posted in Nagaland were entitled to get rent free accommodation and their

Attested
Advocate

Attested
Advocate

defence related only to the rate of HRA as one of the components of compensation in lieu of rent free accommodation.

50. With ^{the} above nature of the case the then learned Members of this Bench observed in the order dated 31.10.90 as follows:

Para 1 "..... Briefly stated the facts of the case are that Telecom and Postal employees posted anywhere in Nagaland were provided with rent free accommodation. If they were not given Government accommodation, they were entitled to House Rent Allowance as in 'B' class cities".

Para 3 "On behalf of the Central Government a written statement was filed, followed, on our orders, by a clarificatory statement. In this none of the facts mentioned by the petitioners and summarised in the above paragraph were disputed.....".

Para 4 "..... Since Nagaland, irrespective (of) the stations of the entire territory, was considered as a difficult area from the point of view of availability of rented house, all P & T employees posted there either got rent free quarters or, where such quarter could not be provided by the Government, were given house rent at the rate applicable to 'B' class cities".

"It appears to us that the HRA is paid by the Central Government for compensating an employee on account of his residential accommodation in the place of posting".

(Emphasis supplied)

With the above conclusions it was held that the applicants were entitled to House Rent Allowance applicable to Central Government employees posted in 'B' class cities which included the classifications B1 & B2 (from 18.5.1980).

51 It is true that the decision related only to P & T employees and the core of controversy decided was as regards the rate of HRA that was payable. However the impact of the decision is to hold

Attended
by
Advocate

Advocate

that all the employees of P & T Department posted in Nagaland were entitled to get rent free accommodation or compensation in lieu thereof. The ^{O.M.} ~~B-74~~ 12-11/60 dated 2.8.60 obviously was not invoked to deny that benefit to them. Apparently there was no coordination between the concerned Ministries of the Govt. of India in formulating the defence in that case and that resulted in the aforesaid O.M. not having been relied upon which could ^{material} ~~real~~ the eligibility criteria.

S/A. We have seriously considered the aspect whether since that decision related only to P & T employees and although it became applicable to all employees of that Department notwithstanding the O.M. (12-11/60) dated 2.8.60 whether a different view should be taken in the light of the said O.M. (12-11/60 2.8.60) in the instant applications which relate to different departments of the Govt. of India other than P & T Department except O.A. 2/94 which is ~~filed~~ ^{filled} by Postal Employees who are fully covered by the decision in O.A. 42/89 (supra). Consistently with the view we have ~~indicated~~ ^{expressed} on the applicability of O.M. 12-11/60 dated 2.8.60 it would have been open to us to take a different view than taken in O.A. 42/89 in respect of departments other than P & T. We are not however persuaded to do so for two reasons. Firstly, it having been held that the concession of rent free accommodation or compensation in lieu thereof was available all the employees posted in Nagaland which position was not controverted by the Government of India even in respect of P & T employees, we think that that principle should be applied to employees of other Departments concerned in the instant applications also in order to avoid resultant discriminatory treatment to employees of other Departments being ^{meted} ~~meted~~ out. Secondly, we are of the opinion that the judgement of the Hon'ble

Attested

[Signature]

Advocate.

sketch
vocal

Supreme Court touching the above aspect does not leave it open to us to take a different view.

52. We therefore now turn to the judgement of the Supreme Court (dated 18.2.93) once again. The opening passage reads :

"Group 'C' and 'D' employees of Telecommunications and Postal Department posted in the State of Nagaland approached the Central Administrative Tribunal Guwahati seeking a direction to the Union of India to pay them the House Rent Allowance at the rates as admissible to the employees posted in 'B' class cities"

Proceeding further Their Lordships' referred to the order of the President of India dated January 8, 1962 and set out the portion 1.(iii) (already quoted above by us) reading as follows :

"1. (iii) Rent free accommodation on a scale approved by the local administration...The P & T staff in NHTA who are not provided with rent free accommodation will, however draw HRA in lieu thereof at the rates applicable in 'B' class cities contained in Col. 4 Paragraph 1 of the Ministry of Finance O.M. No. 1(22)-EII(8)/60 dated the 2nd August, 1960".

and proceeded to observe that :

" It is clear from the order quoted above that the P & T employees posted in the State of Nagaland are entitled to rent free accommodation or in the alternative to the House Rent Allowance at the rates applicable in 'B' class cities"

Lastly, Their Lordships observed :

" We see no infirmity in the judgement of the Tribunal under appeal. We agree with the reasoning and the conclusions reached therein"

53. The respondents (Govt. of India) did not urge before the Supreme Court that the words 'who are not provided with rent free accommodation' occurring in the order of the President dated 2.8.62



Attested
Advocate

1000

meant only those employees who were within the eligibility criteria prescribed in G.I. M.H and W, O.M. No. 12-11/60 ACC-I dated 2nd August, 1960 as is sought to be contended in the instant O.A.s. As stated earlier it follows from the judgement that all the employees of the P & T Department posted in Nagaland irrespective of being covered by O.M. 12-11/60 dated 2.8.60 or not were held to be entitled to rent free accommodation or the compensation in lieu thereof. On a parity of reasoning and with no rational criteria to differentiate employees of departments other than of P & T employees being discernible we are of the view that the benefit of the judgement should be available to the applicants in the instant applications who are posted in Nagaland without applying the criteria in the O.M. dated 12-11/60 dated 2.8.60. We hold that the respondents are estopped from taking up a stand in the instant cases relying upon the said O.M. inconsistently with what was held by the Supreme Court in the aforesaid judgement. The respondents must take the consequences of the failure to draw the attention of the Tribunal or the Hon'ble Supreme Court to the O.M. 12-11/60 dated 2.8.60 in the proceedings in O.A. 42(G)/89. We further hold that the said O.M. though not revoked or withdrawn so far by the Govt. of India has ceased to have any efficacy or applicability in the instant cases being inconsistent with the judgements of the Supreme Court and Central Administrative Tribunal in O.A. 42 (G)/89 and it is not open to the respondents in the instant cases to invoke ^{and} apply the same in order to deny the concession of rent free accommodation or compensation in lieu thereof to the respective applicants posted in State of Nagaland. We further hold that the latest O.M. issued by Ministry of Finance (Expenditure) O.M. No. 2(25)/92/E-11-8 dated 16.5.1994 (discussed below) also does not alter the above position as it does not contain fresh orders but is based on the very O.M. 12-11/60 dated 2.8.60 which can no longer

10/5/94
Advocate

be applicable to the applicants as held in the preceding discussion. We read the judgement of the Hon'ble Supreme Court, with respect, as conclusive on both the points namely entitlement of rent free accommodation or compensation in lieu thereof as well as rate of House Rent Allowance to be payable as for 'B' class cities.

54. The position that would emerge in the light of above discussion would be as follows :

- (i) The O.M 12-11/60-ACC-I dated 2.8.60 is still operative.
- (ii) By reason of the aforesaid OM which governs the OMs dated 23.9.86 and 13.11.87 the concession of compensation in lieu of rent free accommodation would be available only to those employees who fulfil the criteria of eligibility prescribed under the OM aforesaid dated 2.8.60.
- (iii) There has been no decision of the Govt. of India entitling the Central Government Employees posted in Nagaland (except who are eligible for the concession of rent free accommodation or compensation in lieu thereof under O.M. 12-11/60 ACC-I dated 2.8.60) to get the concession of rent free accommodation or compensation in lieu thereof.

However, even with the above conclusions at (i) to (iii) the relief of compensation cannot be refused to the respective applicants in view of the decision of the Hon'ble Supreme Court.

- (iv) The compensation mentioned above consists of licence fee plus House Rent Allowance.
 - (v) The House Rent Allowance even for the purposes of compensation has to be paid as prescribed for 'B' class cities with effect from 1.10.1986 when the recommendations of the IVth Central Pay Commission were enforced.
 - (vi) House Rent Allowance where payable to the applicants apart from as a component of compensation in lieu of rent free accommodation will also be payable at the rate payable for 'B' class cities to Central Government employees.
- 'B' cities include cities classified as B1 and B2

Attested
Advocate

Attested
Advocate

55. In U.A. 48/91 claim is made for payment of House Rent Allowance @ 15% of pay per month from 1974 to 30.6.87 and House Rent Allowance compensation @ 25% from 1.7.87 onwards. In view of conclusions recorded above relief will be granted only to the extent indicated below in the final order, *consistently with the original order.*

56. In O. A. 2/94 the principal claim is made for a declaration that employees of Postal Department posted in Nagaland are entitled to House Rent Allowance applicable to the Central Government Employees in 'B' class cities with effect from 1.10.1986. It is also prayed that relief may be granted in respect of compensation in terms of O.M. dated 13.11.87.

Both these reliefs will be granted to the extent indicated below in the final order consistently with the payments as may have already been made under original order dated 17.3.94.

57. In O.A. 11/95 two fold relief is prayed for. Firstly a ~~declaration is sought~~ to the effect that all Group 'C' & 'D' employees of the Directorate of Census Operations posted in Nagaland are entitled to House Rent Allowance as well as compensation in lieu of rent free accommodation applicable to Central Govt. Employees posted in 'B' class cities with effect from 1.10.1986. These prayers will be granted to the extent indicated below in the final order.

Secondly a direction is sought to the respondents to release the arrears with effect from 1.10.1986 towards the two reliefs claimed in the declaration. This also will be only granted as indicated below.

58. In O. 37/95 also a declaration is sought coupled with direction to pay the arrears from 1.10.1986 towards House Rent Allowance @ 15% and compensation in lieu of rent free accommodation at the rates applicable to Central Government Employees posted in

A Hester
Advocate

W.D.

'B' class cities. Here also relief will be granted as indicated below. from 1.10.1986 and 1.7.1987 respectively.

In O.A. 105/95 applicants pray for House Rent Allowance at the rate payable to B-2 class cities and compensation on the lines in O.A. 48/91.

59. A note of a recent Ministry of Finance (Expenditure) O.M. No. F 17(2)-E-II (A)/93 containing copy of O.M. No. 2(25)/92/E-II (B) dated 16.5.1994 issued by the same Ministry is necessary to be taken. That is issued on the subject of grant of compensation in lieu of rent free accommodation.

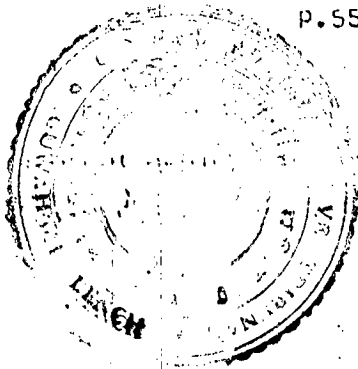
(It is published at item 44 in journal section of 1995 (1) SLJ p.55). It provides as follows :

" 2. The matter has been considered and the President is pleased to decide that the Central Government employees who are entitled to the facility of rent free accommodation in accordance with the Ministry of Urban Development O.M. No. 12-II/60-ACC-I dt. 2.8.60 and who have not been provided with such accommodation, will be entitled to compensation in lieu of rent free accommodation as under :

(i) The lowest amount charged as licence fee for the entitled type of accommodation as fixed in terms of Ministry of Urban Development (Directorate of Estates) above mentioned O.M. dt. 26.7.93 and

(ii) House Rent Allowance admissible to corresponding employees in that classified city/unclassified place in terms of para 1 of this Ministry's O.M. No. 111013/2/86-E.II(B) dt. 23.9.83 for Central Govt. employees belonging to Group 'B' 'C' & 'D' and para 1 of O.M. No. 11013/2/86-E.II(B) dt. 19.3.87 for Central Government employees belonging to Group 'A'.

3. These orders take effect from 1.7.93, the date from which the rate of licence fee was revised.



*Allocated
&
Adm. cell*



*1-12-95
ham
11/12/95*

3. Lastly effective dates for payment have to be indicated. Although some of the applicants have laid a claim for the period prior to 1.1.1986 that cannot be granted. We would follow the date indicated in the judgement of the Supreme Court (Supra) namely 1.10.1986. In that case although Tribunal granted the claim from 18 May 1980 Their Lordships have modified that direction in following terms ;

"We are, however, of the view that the Tribunal was not justified in granting arrears of House Rent Allowance to the respondents from May 18, 1980. The respondents are entitled to the arrears only with effect from October 1, 1986 when the recommendations of the Central Pay Commission were enforced

therefore adopt the date 1.10.1986 as the basic date for granting relief to the applicants even though the claim may have been made for period since prior thereto.

This will be subject to concerned employees being in service on that day. For employees posted subsequently the date of posting will be taken into account.

However we are not in a position to specify as to for how long the said benefit would continue. It would depend upon the policy decisions taken by the Government of India from time to time in the exigencies of the situation. To the extent that from 1.10.1986 till the dates of the filing of the respective applications the applicants would be entitled to get the relief there does not arise any difficulty. ^{But as} As noted earlier, from 1.3.1991 the cities and towns have been re-classified under O.M. dated 14.5.1993 on the basis of 1991 Census. Although the classification prevailing under O.M. dated 2.1.1983 as amended from time to time lastly by OM dated 5.7.90 would be subject to the decision of the Supreme Court which was rendered on 8.2.1993 the same cannot be said about the reclassification introduced by OM No. 2(2)/93-E-II(B) dated 1.5.1993. It will be for the respondents



Attested
by
Secretary

Attested
by
Secretary

to examine the impact thereof in the light of the discussion in this order and regulate the payment accordingly for the period as from and subsequent to 1.3.1991 until further change has been introduced. We make it clear that as the said U.A. dated 14.5.1993 is not the subject matter of these applications we do not express any opinion about its applicability or otherwise or extent thereof as to the payment of compensation ^{and} of HRA and if any of the applicants would feel aggrieved with any action taken by the respondents on its basis they will be at liberty to pursue their remedies in accordance with the law.

65. We are not impressed by the objection of limitation raised by the respondents in U.A. 46/91 and reject the same.

66. In conclusion we answer the points formulated as follows :

- | | | |
|------------|---|---|
| Point i | : | Yes |
| Point ii | : | Licence fee plus House Rent allowance - <i>as mentioned below</i> |
| Point iii | : | Yes (10%) |
| Point iv | : | Yes - at the rate applicable to Central Government Employees in 'B' Class Cities. (including 81 or 82) upto 1.3.1991 and thereafter as indicated in the order below : |
| Point v | : | Yes - as above |
| Point vi | : | As indicated in final order below |
| Point vii | : | Yes ^{vis-a-vis} vis-a-vis P & T Department |
| Point viii | : | As per final order below. |

67. In the result following order is passed in respect of each U.A. separately.



*Attested
+
H.R. rate*

[Signature]

Attested
[Signature]
Advocate.

ORDER

48/91

It is declared that the applicants are entitled to draw compensation in lieu of rent free accommodation. The respondents do pay the same to the applicants as directed below :

1. (a) House rent allowance at the rate applicable to the Central Government employees in 'B' (B1-B2) class cities/towns for the period from 1.10.1986 or actual date of posting in Nagaland if it is subsequent thereto, as the case may be, upto 28.2.91 and at the rate as may be applicable from time to time as from 1.3.1991 onwards and continue to pay the same.
- (b) For the purpose of above direction it is clarified that the rate may be calculated on the basis of percentage, or flat rate or slab rate as may be applicable from time to time during the period from 1.10.1986 upto date but it shall not be less than 15% of monthly pay for the period between 1.10.1986 and 14.2.1995.
- (c) Arrears from 1.10.1986 upto 14.2.1995^{he} paid accordingly - subject to the adjustment of the amount as may have already been paid to the respective applicants for the aforesaid period in compliance with the original order dated 26.11.1993 (set aside on review on 14.2.95)
- (d) No recovery shall be made of any amounts paid in compliance with the order dated 26.11.93 upto 14.2.95.
- (e) Future payment from 15.2.1995 to be regulated in accordance with clause (a) above.

Attested
Advocate

Attested
Advocate.

(f) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

2. (a)

Licence fee @ 10% of monthly pay (subject to where it was prescribed at a lesser rate depending upon the extent of basic pay) with effect from 1.7.1987 or actual date of posting in Nagaland if it is subsequent thereto as the case may be, upto date and continue to pay the same until the concession is not withdrawn or modified by the Government of India or till rent free accommodation is not provided.

(b) Arrears to be paid for the period from 1.7.1987 (or actual date of posting in Nagaland if it is subsequent thereto as the case may be) upto 14.2.1995 payable under the original order dated 26.11.93 (set aside on review on 14.2.95) subject to adjustment of amount as may have already been paid for this period in compliance with the original order dated 26.11.93 upto 14.2.95.

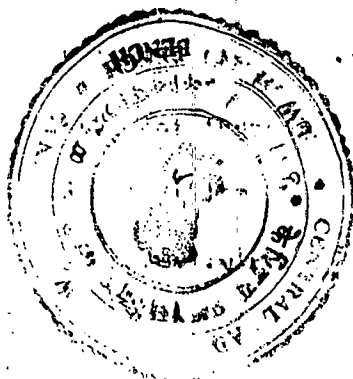
(c) No recovery shall be made of any amounts paid in compliance with the order dated 26.11.93.

(d) Future payment to continue from 15.2.95 subject to clause (a) above.

(e) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

O.A. allowed in terms of above order. No order as to

costs.



Handwritten notes:
11/20/95
12/20/95

Handwritten notes:
11/20/95
12/20/95

2/94

It is declared that the applicants are entitled to draw compensation in lieu of rent free accommodation. The respondents do the same to the applicants as directed below :

- (a) House rent allowance at the rate applicable to the Central Government employees in 'B' (B1-B2) class cities/towns for the period from 1.10.86 or actual date of posting in Nagaland if it is subsequent thereto, as the case may be, upto 28.2.1991 and at the rate as may be applicable from time to time as from 1.3.1991 onwards, and continue to pay the same.
- (b) For the purpose of above direction it is clarified that the rate shall be adopted as 15% of monthly pay under the original order dated 17.3.1994 with effect from 1.10.1986 till 21.8.1995 (when the said order was set aside) and as from 22.8.1995 the rate as may be applicable whether on percentage basis or slab basis under the existing Government Memoranda.
- (c) Arrears from 1.10.1986 upto 21.8.1995 to be paid as indicated in clause (b) above subject to the adjustment of the amount as may have already been paid for this period in compliance with the original order dated 17.3.94 upto 21.8.95.
- (d) No recovery shall be made of any amounts paid in compliance with the order dated 17.3.1994.
- (e) Future payment from 22.8.1991 to be regulated in accordance with clause (a) above.

tested
Advocate

Wan

- (f) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of this order by the respondents.

2 (a)

licence fee @ 10% of monthly pay (subject to where it was prescribed at a lesser rate depending upon the extent of basic pay) with effect from 1.7.1987 (or actual date of posting in Nagaland if it is subsequent thereto as the case may be) upto date and continue to pay the same until the concession is not withdrawn or modified by the Government of India or till rent free accommodation is not provided.

- (b) Arrears to be paid @ 10% of monthly pay for the period from 1.7.1987 (or actual date of posting in Nagaland if it is subsequent thereto as the case may be) upto 21.8.1995 payable under the original order dated 17.3.1994 (set aside on 21.8.1995) subject to adjustment of amount as may have already been paid for this period in compliance with the original order dated 17.3.94 upto 21.8.95.

- (c) No recovery shall be made of any amounts paid in compliance with the order dated 17.3.1994.

- (d) Future payment from 22.8.1995 to be made under this order.

- (e) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of this order.

O. A. allowed in terms of above order. No order as to

costs.

judgment
pdt. No.

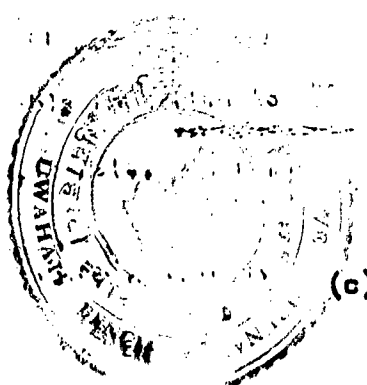
Allowed
1
Advocate

W.D.

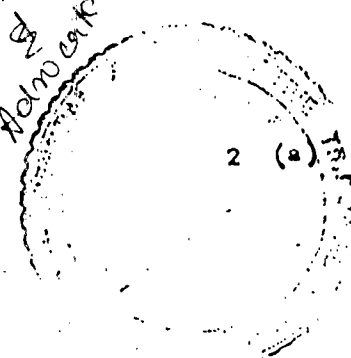
P.A. 11/95

It is declared that the applicants are entitled to draw compensation in lieu of rent free accommodation. The respondents do pay the same to the applicants as directed below :

1. (a) House rent allowance at the rate applicable to the Central Government employees in 'B' (B1-B2) class cities/towns for the period from 1.10.1986 or actual date of posting in Nagaland if it is subsequent thereto, as the case may be, upto 28.2.1991 and at the rate as may be applicable from time to time as from 1.3.1991 onwards and continue to pay the same.
 - (b) For the purpose of above direction it is clarified that the rate may be calculated on the basis of percentage or flat rate or slab rate as may be applicable from time to time during the period from 1.10.1986 upto date.
 - (c) Arrears from 1.10.1986 upto date to be paid accordingly, subject to the adjustment of the amount as may have already been paid to the respective applicants during the aforesaid period.
 - (d) Future payment to be regulated in accordance with clause(a) above.
 - (e) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.
2. (a) Licence fee @ 10% of monthly pay (subject to where it was prescribed at a lesser rate depending upon the extent of basic pay) with effect from 1.7.1987 or actual date of posting in Nagaland if it is subsequent thereto as the



Attested
Advocate



Attested
Advocate.

- (b) For the purpose of above direction it is clarified that the rate may be calculated on the basis of percentage or flat rate or slab rate as may be applicable from time to time during the period from 1.10.1986 upto date.
- (c) Arrears from 1.10.1986 upto date to be paid accordingly subject to the adjustment of the amount as may have already been paid to the respective applicants during the aforesaid period.
- (d) Future payment to be regulated in accordance with clause(a) above.
- (e) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

2. (a) Licence fee @ 10% of monthly pay (subject to where it was prescribed at a lesser rate depending upon the extent of basic pay) with effect from 1.7.1987 or actual date of posting in Nagaland if it is subsequent thereto as the case may be, upto date and continue to pay the same until the concession is not withdrawn or modified by the Government of India or till rent free accommodation is not provided.

(b) Arrears to be paid for the period from 1.7.1987 (or actual date of posting in Nagaland if it is subsequent thereto as the case may be) upto date.

(c) Future payment to continue from 23.8.95 to be regulated in accordance with clause (a) above.

Attested
Advocate

Attested
Advocate

72

- 59 -
47
- 60 -

case may be, upto date and continue to pay the same until the concession is not withdrawn or modified by the Government of India or till rent free accommodation is not provided.

- (b) Arrears to be paid for the period from 1.7.1987 (or actual date of posting in Nagaland if it is subsequent thereto as the case may be) upto date.
- (c) Future payment to be regulated in accordance with clause(a) above.
- (d) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

O.A. allowed in terms of above order. No order as to costs.

O.A. 37/95

It is declared that the applicants are entitled to draw compensation in lieu of rent free accommodation. The respondents do pay the same to the applicants as directed below :

- 1. (a) House rent allowance at the rate applicable to the Central Government employees in 'B' (B1-B2) class cities/towns for the period from 1.10.1986 or actual date of posting in Nagaland if it is subsequent thereto, as the case may be, upto 28.2.91 and at the rate as may be applicable from time to time as from 1.3.1991 onwards and continue to pay the same.

Attested
Adm. Clerk

Attested
Adm. Clerk

- 50 -

(a) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

2. (a) Licence fee @ 10% of monthly pay (subject to where it was prescribed at a lesser rate depending upon the extent of basic pay) with effect from 1.7.1987 or actual date of posting in Nagaland if it is subsequent thereto as the case may be, upto date and continue to pay the same until the concession is not withdrawn or modified by the Government of India or till rent free accommodation is not provided.

(b) Arrears to be paid from the period from 1.7.1987 (or actual date of posting in Nagaland if it is subsequent thereto as the case may be) upto date.

(c) Future payment to be regulated in accordance with clause (a) above.

(d) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

O.A. allowed in terms of above order. No order as to costs.

TRUE COPY

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

Section Officer (J)

अध्यापक अधिकारी (न्यायिक शाखा)

Guwahati

Guwahati

Guwahati

A Hester
Advocate

Amended
when

- 61 -
49
62
- (d) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

O.A. allowed in terms of above order. No order as to costs.

(e)

O.A. 105/95

It is declared that the applicants are entitled to draw compensation in lieu of rent free accommodation. The respondents do pay the same to the applicants as directed below:

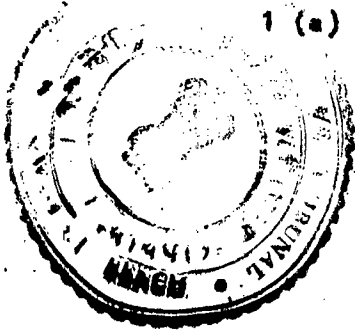
1 (a)

House rent allowance at the rate applicable to the Central Government employees in 'B' (B1-B2) class cities/towns for the period from 1.10.1986 or actual date of posting in Nagaland if it is subsequent thereto, as the case may be, upto 28.2.91 and at the rate as may be applicable from time to time as from 1.3.1991 onwards and continue to pay the same.

- (b) For the purpose of above direction it is clarified that the rate may be calculated on the basis of percentage or flat rate or slab rate as may be applicable from time to time during the period from 1.10.1986 upto date.

- (c) Arrears from 1.10.1986 upto date to be paid accordingly subject to the adjustment of the amount as may have been paid to the respective applicants during the aforesaid period.

- (d) Future payment to be regulated in accordance with clause (a) above.



Attested &
Advocate

Wan

भारतीय डाक विभाग
DEPARTMENT OF POSTS, INDIA

To
The Chief Postmaster General,
N.E. Circle, Shillong.

Shri F.P. Solo,
Director Postal Services,
Nagaland, Kohima.

Vig-5/2/89-90(Pt.II)

Dated at Shillong-793001, the 04 Dec 97.

विषय
Subject

Kindly refer to your D.O. letter No. A-6/HRA/ND/III dated 27.10.97 regarding payment of compensation in lieu of Requisitionary Accommodation (RFA) at the rate of 10% of pay to the postal employees posted in Nagaland Division.

In this connection kindly refer to this office letter of even No. dated 25.9.97 (copy enclosed) wherein it was informed that the Directorate on receipt of memorandum from Staff Union, intimated that the case was forwarded to the Ministry of Finance, Department of Expenditure, New Delhi for their approval. But the Ministry of Finance is not in favour of extension of the benefit of the CAT's Judgement dt. 22.8.95 to any other employees except the petitioners.

As regards clarification payment of compensation in lieu of RFA in the revised scale, the matter has been taken up with the Directorate pending clarification from Directorate, payment of the compensation to the petitioners at the old rate may be continued.

(A.K. Dutta)
Asstt. Director (Bldg)
for Chief Postmaster General,
N.E. Circle, Shillong.

Attended
Adm. Ck

AD
W.D.

N F P E

INDIA POSTAL EMPLOYEES UNION
CLASS III (Including ED)

Divisional Branch

KOHIMA-797001, NAGALAND

NO.F-iii/DNL-ER/KOM

Dtd. 31.1.98.

Date

MEMORANDUM

- To: 1. The CPMG, N.E.Circle, Shillong.
2. The D.P.S, Nagaland, Kohima.

PAYMENT OF COMPENSATION IN LIEU OF RENT FREE
ACCOMMODATION AT THE RATE OF 10% OF PAY.

The Postal employees of Nagaland Dn. had been paid compensation in lieu of RFA at the rate of 10% of basic pay in accordance with the CAT's order dtd.22.8.95. Since the same facility has not been provided in the revised pay commission, effected from 1.1.96 to the employees of Postal Department, Nagaland Dn; a circular was issued by the CPMG, N.E.Circle, Shillong vide this regarding. Vg 5-2/ER-90 (Pt-II) dtd.4.12.97 to the DPS Nagaland Dn. stating that the compensation in lieu of RFA may be paid to the employees at the old rate. But it is regretted to notice that the employees were getting the same at 10% of the old basic pay. As the introduction of 5th CPC, no members of this Service Union opted for availing the previous (old) scale of pay and all were being drawn in the revised scale. Hence, all the allowances except compensation in lieu of RFA, are being drawn in the revised scale. But the authority interpreted that the "old rate" mentioned in the circular mentioned above meant by the "old rate" in the basic pay. It is clear that the "old rate" meant for 10% on the basic pay. The same facility is being enjoyed by some other employees in Nagaland, in the revised scale. Hence, it is requested that the compensation in lieu of RFA may kindly be extended to the employees of Postal Department, Nagaland Dn. at the old rate pay in the revised scale of pay immediately.

Yours faithfully,

Divisional Secretary

A.P. (N.E. Circle) & EDA

Kohima-797001

Asst. Chief Secretary

2-11-8-15

Kohima-797001

Attended

Advocate

WOM

ORDER SHEET

APPLICATION NO. O.A. 226 OF 1998

Applicant(s) All India postal Employees Union & ORs

Respondent(s) Union of India & ORs

Advocate for Applicant(s) Mr. B.K. Sharma

Mr. S. Sarma

Mr. U.K. Nair

Advocate for Respondent(s)

Mr. S. Ali, Sr.

C.S.R.

Notes of the Registry

Date

Order of the Tribunal

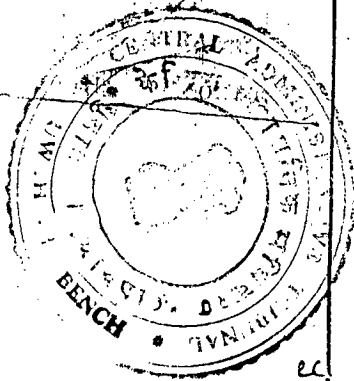
31.5.2001

(Kohima)

In this application the applicants have claimed relief in respect of compensation in lieu of rent free accommodation at the revised rates with effect from 1.1.1996. The relief was also claimed in respect of other members of the Union who were not being paid compensation in lieu of rent free accommodation. Mr. S. Sarma, learned counsel for the applicants mentioned that the relief claimed in this application has been allowed by the department to the applicants as well as to other members of the Union who were not earlier being allowed this compensation. He has prayed for permission to withdraw the application.

In view of the prayer made on behalf of the applicants the application stands dismissed as withdrawn. The applicants will be free to agitate the matter, if so advised, in future.

No order as to costs.



Sd/-MEMBER (Adm)

RECEIVED
 26/11/2007
 Section 3(1)(a)
 Central Administrative Tribunal
 Guwahati Bench
 Guwahati

Interested
 Union
 Advocate

DEPARTMENT OF POSTS
POSTER GENERAL : N.E.CIRCLE

SHILLONG
OFFICE OF THE D
23-12-98

66 -

Estt. Sec.

CAT Case
Urgent

ANNEXURE-5



Government of India
Ministry of Communications
Department of Posts

209
cl

No.4-52/98-PAP

Dated: 27.01.1999

To

The Chief Postmaster General,
N.E. Circle.
Shillong.

Subject: Payment of compensation in lieu of rent free accommodation at the rate of 10% of pay in the revised scale of pay.

Sir,

I am directed to refer to your office letter/FAX No.Est/2-128/Rlg/Corr./III dtd. 23.12.98 on the above subject. The case has been examined at this end and it has been decided that the benefit of 10% of pay (including the revised pay scale w.e.f. 1.1.96) as compensation in lieu of rent free accommodation may be extended to the petitioners only as per the directive of the Court which is as per the clarification received from the Ministry of Finance. Payment will be subject to further clarification that would be obtained from the Ministry of Finance in this matter. If it is found subsequently that any unintended benefit accrued to the petitioners, that would be recovered on receipt of such clarification/decision of Ministry of Finance. This may please be brought to the notice of all concerned staff.

(Karuna Pillai)
Director (Estt)

CD
10000 circular
to 505/96. Rmna
5-2-99

AIR TO

WON

Advocate

DEPARTMENT OF POSTS : INDIA
OFFICE OF THE DIRECTOR OF POSTAL SERVICES
NAGALAND : KOHIMA - 797001

No.A-6/HRA/ND/III

Dated at Kohima the 19.11.01

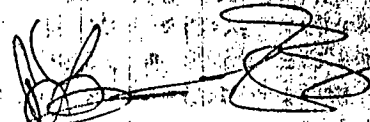
To,

The Postmaster,
Kohima HO.

Sub:- Grant of compensation in lieu of Rent Free Accommodation.

Please find enclosed herewith a copy of CO letter no.Bldg/5-1/76/Rlg, dtd. 12.11.01 on the above mentioned subject.

You are, therefore, requested to calculate the amount already paid to average staff for the purpose of working out the no. of instalments for recovery.



(P.Chakraborty)

Supdt. of Post Offices (HQ)
For Director of Postal Services
Nagaland, Kohima-797001

Amr
Wom
Ldrec

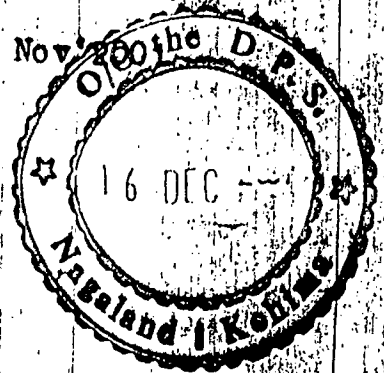
DEPARTMENT OF POST INDIA.
OFFICE OF THE CHIEF POSTMASTER GENERAL N.E.CIRCLE SHILLONG.

160.Bldg/5-1/76/Rlg.

Dated Shillong, the 12th Nov 2000

To

The Director of Postal Services,
Nagaland Division Kohima.



Sub:-Grant of compensation in lieu of Rent Free accommodation.

Ref:-Your letter No.A-6/HRA/ND/III dtd.27.6.2000

With ref.to the above mentioned subject, I am directed to intimate that the revised rates of RFA fixed by the Ministry of Finance Department of expenditure OM No.2(7)/97-EII(B) dtd.21.12.98 will supercede the rate of 10% of revised scale fixed vide Dte's letter No.4-52/98-PAP dtd.27.1.99. This letter is not dtd.21.12.98 rather it is dtd.21.12.99 Which will supercede the letter dtd.27.1.99. The revised rates will be made applicable to the postal Employees of Nagaland Dn. The excess amount already paid to the employees after 1.7.99 will have to be recovered. This is effective with effect from 1.7.99. The overpayment will be recovered. The decision taken by the Divisional Head is final for fixing the instalment.

(T.K.Roy)
Asstt. Engineer(MOW)
Circle Office
Shillong.

16/11/01
O.A. / ed

Attested

WOM
Advocate.

12/11/01

Original Application No.458 of 2001.

Date of Order : This the 8th Day of August, 2002.

THE HON'BLE MR. JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN.

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

1. All India Postal Employees Union
Postman and Grade-D, represented by the
Divisional Secretary Md.Firoz Alam
Divisional Branch, Kohima-797001.

2. All India Postal Employees Union
Class III (Including ED)
Divisional Branch, represented by the
Asstt. Divisional Secretary
Mr.Razuzaki Phinyo
Kohima - 797001.

. . . Applicants.

By Sr.Advocate Mr.B.K.Sharma & Mr.S.Sarma
Mr.U.K.Nair & Ms.U.Das.

- Versus -

1. Union of India
Represented by the Secretary
to the Government of India
Ministry of Communication
Deptt. of Posts.
New Delhi.

2. Director General of Posts
New Delhi.

3. Chief Postmaster General
N.E.Circle, Shillong.

4. The Director of Postal Services
Nagaland Division
Kohima - 797 001.

. . . Respondents.

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

ORDER

CHOWDHURY J.(V.C.) :

This is an application under section 19 of the
Administrative Tribunal's Act, 1985 assailing the
legality and validity of the Office Memorandum dated
12.11.2001 issued from the Office of the Chief

Contd./2

Witnessed

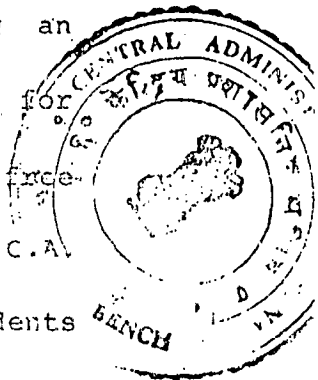
Wm

Advocate.



Postmaster General, N.F.Circle, Shillong relating to grant of compensation in lieu of rent free accommodation. The facts relevant for the purpose of adjudication are outlined herein below :

1. The applicant Nos.1 & 2 are the Office Bearers of the All India Postal Employees Union, Postman and Grade-D Divisional Branch, Kohima. The applicant No.3 is one of the affected person. Since the relief sought by the applicants are of similar nature they are allowed to join together in a single application interms of Rule 5(4) (a) of the C.A.T.(Procedure) Rules 1987. The applicants earlier moved the Tribunal by filing an O.A.2/1994 praying for a direction from the Tribunal for payment of compensation in lieu of rent free accommodation. The judgment and order of the said C.A. dated 22.8.95 was implemented by the respondents authority and the applicants were conferred the benefits of compensation in lieu of free rent accommodation. According to the applicants, consequent to the 5th Central Pay Commission Recommendation the pay structure of the applicants stood revised. The said revision of pay scale was made effective from 1.1.1996. The applicants contended that pursuant to the revisison of pay scale they were entitled to get the revised rate of compensation i.e. 10% of revised rate of pay scale w.e.f.1.1.1996. But the applicants were getting the compensation i.e.10% of old pay scale. The applicants moved the authority praying for revision of compensation



Contd./3

WOM
Advocate.

w.e.f.1.1.1996 in lieu of free rent accommodation. The authority by its communication dated 4.12.1997 informed that the said compensation will be made in lieu of free rent accommodation at the old rate. The applicants made several requests to the authority and as a matter of fact, again moved this Tribunal by filing an O.A., which was numbered and registered as O.A.226/1998. The applicants, however, did not press for the said O.A. and the same was dismissed on withdrawal as it was pleaded that the reliefs as prayed for were already granted by memo dated 27.1.1999. The respondents interms of the said memo paid the arrears of compensation to the applicants. While things rested at that stage the respondents issued the impugned order dated 19.11.2001 communicating the order dated 12.11.2001 superceding the earlier order dated 27.1.1999 providing the benefit of 10% of pay. Hence this application assailing the legitimacy of the order.

2. The respondents contested the case and submitted its written statement. In the writtren statement it was pleaded that the communication dated 12.11.2001 was issued as the rate of rent free accommodation was revised by the Ministry of Finance, Deptt. of Expenditure vide their OM No.2(7)/97-E.II(B) dated 21.12.1999, which was taken after the President of India took a decision on the matter. It was stated that rent free accommodation @ 10% of basic pay was paid to the applicants till 30.6.1999. Thereafter, the rate of rent free accommodation was revised under Ministry of

Contd./4

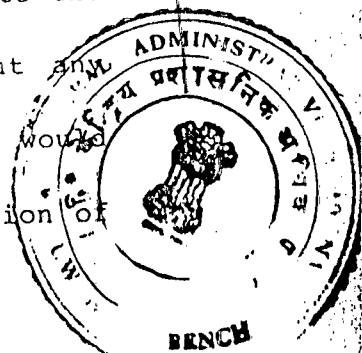
Finance, Deptt. of Expenditure memo dated 21.12.1999.

The revised rate was communicated vide CPMG letter No. Bldg/5-1/76/Rlg dated 12.11.2001. The respondents also pleaded that the recommendation of the 5th Central Pay Commission, the Govt. of India revised not only the basic pay but also other allowances including the rate of compensation in lieu of rent free accommodation which had been fixed at the lowest amount charges as licence fee for the entitled type of accommodation vide the Ministry of Finance, Deptt. of Expenditure OM dated 21.12.1999.

3. We have heard Mr. S. Sarma, learned counsel appearing for the applicants and also Mr. B. C. Pathak, learned Addl. C. G. S. C. for the respondents at length. Admittedly, the impugned order dated 12.11.2001 and the consequent order dated 19.11.2001 were passed after an appropriate decision was taken by the Govt. of India. Mr. S. Sarma, learned counsel for the applicants submitted that the impugned action of the respondents in revising the pay scale is contrary to the law and spirit of the judgment rendered by the CAT in O.A. Nos. 2/1994 and 226/1998. We have perused the whole context of the order of the Tribunal. In the order the Tribunal in its judgment did not pass any order for extending facilities of compensation in lieu of rent free accommodation continually. In the very order itself the Tribunal issued direction to continue to pay the same until the concession was not withdrawn or modified by the Govt. of India or till rent free

Contd./5

accommodation was provided. It is the Govt. of India, which is the competent authority to pass appropriate order on the matter. As a matter of fact, as mentioned in the communication dated 21.12.1999 the President of India took a decision on the matter and the respondents' authority only implemented the same. The communication No.4-52/98-PAP dated 27.1.1999 issued by the Govt. of India, Ministry of Communication, Deptt. of Posts addressed to the Chief Postmaster General, N.E.Circle, Shillong itself indicated that payment would be subject to further clarification that would be obtained from the Ministry of Finance. The payments were made subject to the conditions that 'if it was found subsequently that unintended benefit accrued to the petitioners, that would be recovered on receipt of such clarification/decision of Ministry of Finance.'



In the set of circumstances, the action of the respondents cannot be faulted as arbitrary and unlawful. We do not find any merit in this application. The application thus stand dismissed.

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

TRUE COPY

मिनिस्टर

Sd/VICE CHAIRMAN

Sd/ MEMBER (Adm)

bb

Attested
Advocate.

[Signature]
30/6/02
Section Officer (J)
राष्ट्रीय प्रशासकीय (न्यायिक) निकाय
National Administrative Tribunal
राष्ट्रीय प्रशासकीय निकाय
New Delhi, India, Government of India
राष्ट्रीय प्रशासकीय निकाय

New Delhi, the 21 Dec. 1999

OFFICE MEMORANDUM

SUB: Grant of compensation in lieu of rent free accommodation.

The undersigned is directed to refer to this Ministry's OM of even number 27.8.1997 on the subject mentioned above and to say that consequent upon revision of rates of licence fee for residential accommodation under Central Government all over the country vide Government of India, Ministry of Urban Development (Directorate of Estates) O.M. No. 18011/2/98-PolIII dated 29-6-99 the question of revision of amount of compensation in lieu of Rent Free Accommodation in so far as it relates to the component of licence fee has been under consideration of the Government for some time.

2. The matter has been considered and the President is pleased to decide that the Central Government employees who are entitled to the facility of rent free accommodation in accordance with the Rules of Urban Development (Directorate of Estates) O.M. No. 12-11/60-XCC dated 2-8-60 and who have not been provided with such accommodation will be entitled to compensation in lieu of rent free accommodation as under:-

(i) The lowest amount charged as licence fee for the entitled type of accommodation as fixed in terms of Government of India, Ministry of Urban Development (Directorate of Estates) above mentioned O.M. dated 29.6.99 and

ii) House Rent Allowance admissible to corresponding employees in that classified city/unclassified place in terms of this Ministry O.M. No. 2 (30)/97-E-II (B) dated 3-10-97 as amended from time to time

iii.

3. These orders take effect from 1.7.99, the date from which the flat rate of licence fee was revised.

4. All other conditions laid down in this Ministry's O.M. No. 11015/1/86-E, II (B) dated 19-2-87, 12-4-87 and 2-11-88 shall continue to be applicable, while computing amount of compensation in lieu of rent free accommodation under these orders.

5. So far as persons serving under the IAS/AD are concerned, these orders issued in consultation with C&AG of India.

SC/-

(N.P. SINGH)

UNDER SECRETARY TO THE GOVT. OF INDIA

amended
W.D.
Advocate.

75 -

ANNEXURE -10

DEPARTMENT OF POSTS : INDIA
OFFICE OF THE DIRECTOR POSTAL SERVICES
NAGALAND, KOHIMA - 797 001

No.A-6/HRA/ND/III

Dated at Kohima the 18.9.2002

To

The Postmaster
Kohima HO - 797 001


Sub:- Grant of compensation in lieu of Rent free accommodation.

The petition of the Service Union claiming compensation at the rate of 10% of pay in lieu of Rent Free Accommodation in OA No. 458/2001 has been dismissed by the Hon'ble CAT in its judgement dtd. 8.8.02.

It is therefore, requested that clarifications / instructions given by CO vide their letter no. Bldg/5-1/76/Rlg. dtd. 12.11.01 and circulated to you vide this office letter of even no. dtd. 19.11.01 may kindly be strictly and immediately implemented.

You are also requested to calculate the amount already paid to average staff for the purpose of working out the no. of instalments for recovery.

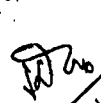
Encls: As above

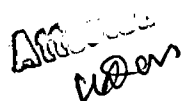

(F.P. Solo)
Director Postal Services
Nagaland, Kohima 797 001

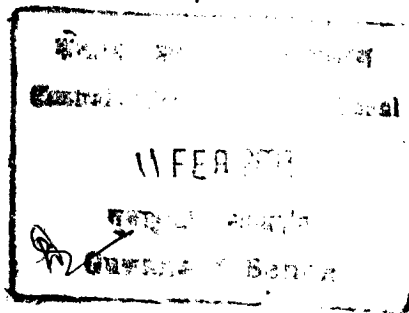
Accs

Please go through
and act accordingly.
The 10% RFA should not be
drawn and may be drawn
in revised rate on slab system.

Done for accs


20/9/02


20/9/02



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:::GUWAHATI

Union of India + others - Respondents
Through: Group Member Choudhary
11/2/03

In the matter of :-
O.A. No.352 of 2002
All India Postal Employees
Union & others.

.... Applicant
-Versus-
Union of India & others
.... Respondents

Written statement for and on behalf of Respondents
Nos.1,2,3 & 4.

I, F.P. Solo, Director Postal Services, Nagaland,
Kohima and Respondent No.4 in the above case do hereby solemnly
affirm and say as follows :-

1. That I am the Director Postal Services, Nagaland,
Kohima and Respondent No.4 in the above case and as such acquainted
with the facts and circumstances of the case. I have gone
through a copy of the application and have understood the
contents thereof. Save and except whatever is specifically
admitted in this written statement, the other contentions and
statements may be deemed to have been denied and the applicants
should be put to strict proof of whatever they claim to the
contrary. I am authorised and competent to file this written
statement on behalf of all the respondents.

2. That with reference to the statements made in paragraph
1 the respondents beg to state that the order dated 18-09-2002
was issued in view of the Hon'ble Tribunal's Judgement in
connection with O.A.No.458/2001. The memo No.Bldg./5-1/76/R1g
dated 12-11-2001 was reiterated vide this letter.

A copy of the said orders dated 18-9-2002 and 12-11-01 are
annexed herewith and marked as ANNEXURE-1 & 2.

Contd..p/2-

2. That the respondents have no comments to the statements made in paragraphs 2,3,4.1,4.2 & 4.3 of the application.

4. That with reference to the statements made in paragraph 4.4 of the respondents beg to state that while declaring that the applicants were entitled to draw compensation in lieu of rent free accommodation (RFA) in its judgement dtd.22-8-95 cited by the applicants, the Hon'ble Tribunal had not ordered that the facility should be enjoyed by the applicants for an indefinite period. On the other hand the Hon'ble Tribunal at para 2(a) of its judgement referred to idid directed the respondent to "continue to pay the same until the concession is not withdrawn or modified by the Government of India or till rent free accommodation is not provided." Thus the Govt. of India was given the liberty to withdraw or change the rate of RFA as it may consider fit from time to time.

5. That with reference to the statements made in paragraph 4.5 of the application, the respondents beg to state that the respondents have paid RFA @ 18% of basic pay till 30-6-1999 and thereafter proposed to pay at the flat rate as the rate of the RFA was revised u.s.f. 01-07-1999 under Ministry of Finance, Deptt. of Expenditure Memo No.2(7)/97-E11(B),dtd. 21-12-99 (Annexure-3). The revised rate was communicated vide Chief PMG letter No.Bldg/5-1/76/Rlg,dtd.12-11-2001 (Annexure-2) It may be reiterated that the Hon'ble Tribunal in their aforesaid order dated 22-8-1995 clearly stated that the Govt. of India is competent to either withdraw or a modify the concession.

6. That with reference to the statements made in paragraph 4.6 of the application, the respondents beg to state that the applicants are getting RFA as per flat rate as modified vide Ministry of Finance, Deptt. of Expenditure, Govt. of India memo No.2(7)/97-E.11(B),dtd.21-12-1999 (Annexure-3)u.s.f. 9/2002. Although aforesaid orders of the Ministry of Finance have the effect from 01-07-1999.

7. That with reference to the statements made in paragraph 4.7 of the application, the respondents beg to state that it was clearly stated in the letter dated 4-12-97 of the Chief PMG cited by the applicants that the Ministry of Finance,Deptt. of Expenditure was not in favour of extension of the Hon'ble Tribunal Judgement dtd.22-8-95 to any other employees except

the petitioners. However, pending clarification from the Directorate payment of compensation to the applicants at the old rate was allowed to be continued.

8. That with reference to the statements made in paragraph 4.8 of the application, the respondents beg to state that there was no question of misinterpretation of the instructions contained in the Chief PMG's letter dated 4-12-97. The instructions were carried out in toto by the respondent. If the rate of 10% in the revised pay was to be paid as compensation in lieu of rent free accommodation, the order would have clearly said so. But in the absence of such specific instructions, it cannot be construed as 10% of revised pay. Moreover, the Chief PMG or for that matter, the Ministry of Communication are not the competent authority to determine the rate of compensation in lieu of RFA to be paid to the Government employees. The competent authority to take decision in such matter is the Ministry of Finance who have already issued necessary order vide their OM No. dated 21-12-99.

9. That with reference to the statements made in paragraph 4.9 of the application, the respondents beg to state that the respondents are not responsible if their sister Department of Telecommunications are not implementing the orders issued by the competent authority in the matter of grant of compensation to their employees.

10. That with reference to the statements made in paragraph 4.10 of the application, the respondents beg to state that the respondents are not aware under what authority the employees of the Deptt. of Tele-communication are getting @ 10%. The applicants also have not cited any specific orders under which they are being paid accordingly.

11. That with reference to the statements made in paragraph 4.11 of the application the respondents beg to state that the respondents are not aware of any such discrimination and the applicants may cite the example to take remedial measure.

Contd..p/4-

12. That with reference to the statements made in paragraph 4.12 of the application the respondents beg to state that as pointed out in paragraph 12 of the written statement the respondents are not aware of such discrimination. In fact the drawing and disbursing authority has extended the benefits of the Hon'ble Courts Judgement to the postal employees posted in Nagaland without any discrimination. As such there was no question of the applicants being aggrieved.

13. That with reference to the statements made in paragraph 4.13 of the application the respondents beg to state that the Directorate under letter No.4-52/98-PAD dtd.27-01-99 (Annexure-4) decided that the benefit of 18% of pay (including the revised pay scale u.s.f. 1-1-96) and compensation in lieu of rent free accommodation may be extended to the petitioners only as per the directive of the Court which was as per clarification received from the Ministry of Finance and payment will be subject to further clarification that would be obtained from the Ministry of Finance in this matter and if it is found subsequently that any unintended benefit accrued to applicants, that would be recovered on receipt of such clarification/decision of Ministry of Finance. This decision was communicated to the Postmaster, Kohima H.O. for information and necessary action by respondent No.4 letter No.A-6/HRA/ND/III, dtd.9-2-99 (Annexure-5).

14. That with reference to the statements made in paragraph 4.14 of the application the respondents beg to state that the statement made in paragraph 13 of the written statement are reiterated. Further, the Directorate under letter No.4-52/98-PAD, dtd.14-5-99 (Annexure-6) instructed the respondent No.3 to defend the case No.226/98 suitably. This instruction was issued in consultation with Deptt. of Expenditure, Ministry of Finance.

15. That with reference to the statements made in paragraph 4.15 of the application, the respondent beg to state that as pointed out in paragraph 13 of this written statement the order dated 27-01-99 granting the benefit to the applicants only was subject to further clarification that would be obtained from the Ministry of Finance in the matter and if any unintended benefit accrued to the applicants, that would be recovered on receipt of such clarification/decision of the Ministry of Finance. The clarification/decision from the Ministry of Finance was received vide their OM dtd.21-12-99 (Annexure-7) through respondent No.3

letter No.Bldg/51/76/R1g dtd. 5-4-2000 (Annexure-8) fixing the rate of compensation in lieu of rent free accommodation at the lowest amount charged as license fee for the entitled type of accommodation. The decision of the competent authority was communicated to the Postmaster, Kohima H.O. for implementation vide respondent No.4 letter No.A-6/HRA/ND/III,dtd.18-4-2000 (Annexure-9)

16. That with reference to the statements made in paragraph 4.16 of the application the respondents beg to state that there is no controversy or ambiguity about the revised rate of compensation and recovery of the unintended benefit paid to the employees. As already pointed out in para 4.13 and 4.15 above, the benefit of 10% of pay granted to the employees vide order No.dtd.27-1-99 was subject to further clarification/decision of the Ministry of Finance and recovery was to be made if any unintended benefit was accrued to the applicants. Necessary clarification/decision was received vide their OM dtd.21-12-99 and there was no question of affording any opportunity of hearing to the applicants in implementation of the decision taken by the competent authority in the matter.

17. That the respondent have no comments to the statements made in paragraph 4.17 of the application.

18. That with reference to the statements made in paragraph 4.18 of the application the respondents beg to state that the Hon'ble Tribunal while disposing OR No.458/2001 in their decision dtd.8-8-2002 set the matter at rest permanently and interalia specifically stated that, "the action of the respondent cannot be faulted as arbitrary and unlawful, we do not find any merit in this application. The application thus stand dismissed". (Annexure-10). Due to the interim order dtd.28-11-2001 of the Hon'ble Tribunal, unintended and unjustified benefit had been accrued to the applicants who may be entitled to house rent allowance (HRA @ 15% of revised pay) but not rent free accommodation (RFA) or compensation in lieu of RFA. The Postmaster, Kohima H.O. and all the Sub Postmaster, in Nagaland are the only categories of employees who are entitled to rent free accommodation or compensation at the rate fixed by the Ministry of Finance vide OM dtd.21-12-99, if rent free accommodation is not provided to them. The applicants who are neither Postmaster Kohima H.O nor

Sub Postmaster, are not at all entitled to compensation in lieu of rent free accommodation and much less compensation @ 10% of revised pay. Since the payment of the RFA @ 10% was unjustified from 1-7-99 and as the respondents have no other alternative but to recover the same.

19. That with reference to the statements made in paragraph 4.20 of the application the respondents beg to state that the respondents sought to recover the amount what had been paid excess. The allowance was continued to be paid to honour the Court's order with clear understanding that if it was found subsequently that any unintended benefit accrued to applicants, that would be recovered on receipt of such clarification/decision of Ministry of Finance. The Hon'ble Tribunal in their decision dtd. 8-8-2002 in OA No. 458/2001 clearly agreed to our above view point and as such there should not be any ambiguity in the matter as it is clear from the judgement referred to by the applicants that the Government is competent enough either to withdraw or modify the benefit and the Government has already modified the benefit vide OM dtd. 21-12-99 and the respondents are going to recover only that portion of the RFA which was paid unjustifiably i.e. from 1-7-99.

20. That with reference to the statements made in paragraph 4.21 of the application, the respondents beg to state that the correct picture is that the respondents paid the RFA @ 10% on or after 1-7-99 with clear understanding that if it was found subsequently that any unintended benefit accrued to applicants, that would be recovered on receipt of such clarification/decision and it is fruitless now to claim that the applicants have spent the said amount on the bonafide belief.

21. That with reference to the statements made in paragraph 4.22 of the application the respondents beg to state that the payment was made on clear understanding of recovery in case of unjustified payment and it has been established that the payment was unjustified and as such it is not agreeable to show any leniency and the respondents are also not competent to do so as the payment of such allowance is made only by the Ministry of Finance, Govt. of India.

22. That the respondents have no comment to the statement made in paragraph 5 of the application.

Contd..p/7-

23. That with reference to the statements made in paragraph 5.1 of the application the respondents beg to state that the order dtd. 18-9-2002 is perfectly in order. It only communicated the decision taken by the competent authority keeping in view the decision made by the Hon'ble Tribunal in OA No.458/2001. The Hon'ble Tribunal in its judgement dtd.22-8-95 in OA No.2/94 has also observed that the Govt. of India was competent to withdraw or modify the concession. Therefore, when the competent authority took the decision to modify the concession given to its employees, there was no question of violation of the principle of natural justice.

24. That with reference to the statements made in paragraph 5.2 of the application the respondent beg to state that the applicants were enjoying a concession/benefit to which they are not entitled to and when the competent authority made a modification pertaining to that concession/benefit, the applicants are not entitled to an opportunity of being heard. The allegation of the applicants is absurd.

25. That with reference to the statements made in paragraph 5.3 of the application the respondents beg to state that the order dtd. 27-1-99 (annexure-4) clearly stated that "payment will be subject to further clarification that would be obtained from the Ministry of Finance in the matter. If it is found subsequently that any unintended benefit accrued to the applicants, that would be recovered on receipt of such clarification/decision of Ministry of Finance." The Ministry of Finance had given necessary clarification/decision vide their OM dtd.21-12-1999.

26. That with reference to the statements made in paragraph 5.4 of the application the respondents beg to state that the respondents have not acted in any arbitrary, illegal or illogical manner. As such their actions or acts in the matter cannot be set aside or quashed.

27. That with reference to the statements made in paragraph 6 of the application, the respondents beg to state that the claim of the applicants is incorrect. The applicants have not exhausted the departmental remedies available to them by way of petition or application to the next higher authority if they are not satisfied with the reply of a particular authority.

28. That with reference to the statements made in paragraph 7 of the application the respondents beg to state that the applicants filed OA No.2/94, OA No.226/98 and 458/2001 out of which 226/98 was dismissed as withdrawn and the other two cases had gone in favour of the respondents.

29. That with reference to the statements made in paragraph 8 of the application, the respondents beg to state that the applicants are not entitled to any relief as they are not entitled to any compensation in lieu of rent free accommodation much less, compensation @ 10% of revised pay. Even if they are entitled to any compensation, they are entitled to get only at the rate fixed by the Ministry of Finance vide their GN dtd.21-12-1999.

30. That with reference to the statements made in paragraph 8.1 of the application the respondents beg to state that in view of the above discussion the Application of the applicants deserves to be dismissed.

31. That with reference to the statements made in paragraph 8.2 of the application the respondents beg to state that the payment @ 10% on or after 1-7-1999 was unjustified and as such it is to be recovered as a legitimate conclusion.

32. That with reference to the statements made in paragraph 8.3 of the application the respondents beg to state that the applicants are not entitled to cost of the application as the same is uncalled for and unjustified.

33. That with reference to the statements made in paragraph 8.4 of the application the respondents beg to state that the applicant are not entitled to any other remedies.

34. That with reference to the statements made in paragraph 9 of the application the respondents beg to state that no interim order is eligible in the case as the similar applications were disposed of by the Hon'ble Tribunal in three previous occasions.

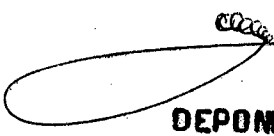
35. That the respondents have no comments to the statements made in paragraph 10, 11 and 12 of the application.

36. That the applicants are not entitled to any relief sought for in the application and the same is liable to be dismissed with costs.

V E R I F I C A T I O N

I, F.P. Solo, Director Postal Services, Nagaland, Kohima being duly authorised and competent to sign this verification do hereby solemnly affirm and state that the statements made in paragraphs 1, 3, 17, 22 + 35 of the application are true to my knowledge and belief, those made in paragraphs 2, 4-16, 18-21, 23-33 being matter of record are true to my information derived there from and those made in the rest are humble submission before the Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 30 th day of Jan. 2003, at ^{KOHIMA} ~~Gowahati~~.

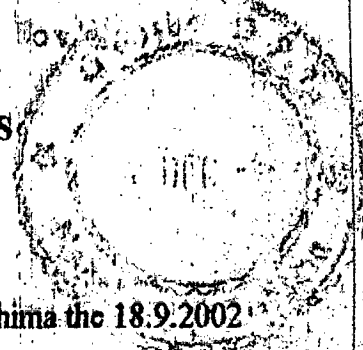

DEPONENT (F.P. SOLO)
Director of Postal Services
Nagaland : Kohima - 797001
निर्देशक, डाक सेवा
कोहिमा-७९७००१

Annexure I

155/C

88

DEPARTMENT OF POSTS : INDIA
OFFICE OF THE DIRECTOR POSTAL SERVICES
NAGALAND, KOHIMA - 797 001



No.A-6/HRA/ND/III

Dated at Kohima the 18.9.2002

To

The Postmaster
Kohima HO - 797 001

Sub:-

Grant of compensation in lieu of Rent-free accommodation.

The petition of the Service Union claiming compensation at the rate of 10% of pay in lieu of Rent Free Accommodation in OA No. 458/2001 has been dismissed by the Hon'ble CAT in its judgement dtd. 8.8.02.

It is therefore, requested that clarifications/ instructions given by CO vide their letter no. Bldg/5-1/76/Rlg. dtd. 12.11.01 and circulated to you vide this office letter of even no. dtd. 19.11.01 may kindly be strictly and immediately implemented.

You are also requested to calculate the amount already paid to average staff for the purpose of working out the no. of instalments for recovery.

Encls: As above

(Signature)
18/9/02
(F.P. Solo)

Director Postal Services
Nagaland, Kohima 797 001

(Signature)
Attested
Natl. Central Govt.
Chandigarh

9/c

Annexure-2

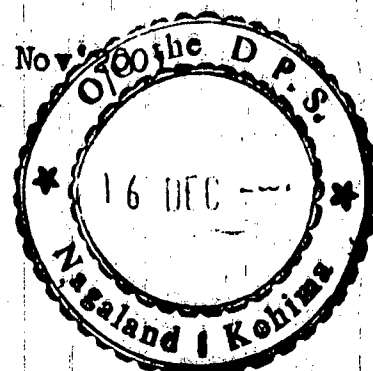
12/731/C

86

DEPARTMENT OF POST INDIA.
OFFICE OF THE CHIEF POSTMASTER GENERAL N.E.CIRCLE SHILLONG.

No. Bldg/5-1/76/Rlg.

Dated Shillong, the 12th Nov.



To

The Director of Postal Services,
Nagaland Division Kohima.

Sub:-Grant of compensation in lieu of Rent Free accommodation.

Ref:-Your letter No.A-6/HRA/ND/III dtd.27.6.2000

With ref.to the above mentioned subject,I am directed to intimate that the revised rates of RFA fixed by the Ministry of finance Department of expenditure OM No.2(7)/97-EII(B) dtd.21.12.98 will supercede the rate of 10% of revised scale fixed vide Dte's letter No.4-52/98-PAP dtd.27.1.99.This letter is not dtd.21.12.98 rather it is dtd.21.12.99 Which will supercede the letter dtd.27.1.99.The revised rates will be made applicable to the postal Employees of Nagaland Dn.The excess amount already paid to the employees after 1.7.99 will have to be recovered.This is effective with effect from 1.7.99.The overpayment will be recovered.The decision taken by the Divisional Head is final for fixing the instalment.

(T.K.Roy)
Asstt. Engineer(MCW)
Circle Office
Shillong.

16/11/01

CA/ert

Attended
AMC
Addl. Central Govt
Standing Counsel

New Delhi, the 21 Dec. 1999

OFFICE MEMORANDUM

Grant of compensation in lieu of rent free accommodation.

The undersigned is directed to refer to this Ministry's OM of even number 27.8.1997 on the subject mentioned above and to say that consequent upon revision of rates of licence fee for residential accommodation under Central Government all over the country vide Government of India, Ministry of Urban Development (Directorate of Estates) O.M. No. 18011/2/98-PolIII dated 29-5-99 the question of revision of amount of compensation in lieu of rent free accommodation in so far as it relates to the component of licence fee has been under consideration of the Government for some time.

2. The matter has been considered and the President is pleased to decide that the Central Government employees who are entitled to the facility of rent free accommodation in accordance with the Manual of Urban Development (Directorate of Estates) O.M. No. 12-11/60-MCC dated 2-8-60 and who have not been provided with such accommodation will be entitled to compensation in lieu of rent free accommodation as under:-

(1) The lowest amount charged as licence fee for the entitled type of accommodation as fixed in terms of Government of India, Ministry of Urban Development (Directorate of Estates) above mentioned O.M. dated 29.6.99 and

ii) House Rent Allowance admissible to corresponding employees in that classified city/unclassified place in terms of this Ministry O.M. No. 2 (30)/97-E.II.(P) dated 3-10-97 as amended from time to time.

3. These orders take effect from 1.7.99, the date from which the flat rate of licence fee was revised.

4. All other conditions laid down in this Ministry's O.M. No. 11013/1/86-E.II.(P) dated 19-2-87, 12-1-87 and 2-3-88 shall continue to be applicable, while working out the amount of compensation in lieu of rent free accommodation on or after these orders.

5. So far as persons serving under the LAM are concerned, these orders have in consultation with C&G of India.

Attended
M. Chandra
M. Central Govt
Standing Counsel

SC/-

(N.P. SINGH)

UNDER SECRETARY TO THE GOVT. OF INDIA

-65-

DEPARTMENT OF POSTS
POSTMASTER GENERAL : N.E. CIRCLE

SHILLONG
OFFICE OF THE D
23-12-98

Annexure 4

ESL Sec

CAT Case
Urgent

ANNEXURE



Government of India
Ministry of Communications
Department of Posts

209

No. 4-52/98-PAP

Dated: 27.01.1999

To

The Chief Postmaster General,
N.E. Circle.
Shillong.

Subject: Payment of compensation in lieu of rent
free accommodation at the rate of 10% of
pay in the revised scale of pay.

Sir,

I am directed to refer to your office
letter/FAX No. Est/2-128/Rlg/Corr./III dtd.
23.12.98 on the above subject. The case has been
examined at this end and it has been decided that
the benefit of 10% of pay (including the revised
pay scale w.e.f. 1.1.96) as compensation in lieu
of rent free accommodation may be extended to the
petitioners only as per the directive of the Court
which is as per the clarification received from
the Ministry of Finance. Payment will be subject
to further clarification that would be obtained
from the Ministry of Finance in this matter. If it
is found subsequently that any unintended benefit
accrued to the petitioners, that would be
recovered on receipt of such
clarification/decision of Ministry of Finance.
This may please be brought to the notice of all
concerned staff.

Attended
H.K. Choudhary

Adl. Central Govt
Standing Counsel

(Kāruna Pillai)
Director (ESL)

10000
10/25/98
5/1/2000

13

Annexure 5

(89) 871

Department of Posts India

O/o the Director of Postal Services

Nagaland Kohima-797001

DEPARTMENT OF POSTS

NAAGLAND, KOLIMA-797001

TELEPHONE NO. 11001

No. A-6/17RA/ND/112

Dated, Kohima, 9-2-99

Date 14-5-99

To,

The Postmaster

Kohima H.O.

Subj: payment of compensation in lieu of rent
free accommodation at the rate of 10% of
pay in the revised scale of pay.

Enclosed please find herewith a copy of

Dte's letter no. 4-52/98-PAP dtd 27-1-99 received

under C.O. letter no. Est/2-128/RIg/COR/17 dtd

S-2-99 on the subject noted above for informa-

tion, guidance and necessary action. Dte's

Enc. - as above

Attested
M. C. Chandra
Standing Council

(K. R. DAS) D.M.,
Surgey enclosed services
For D
Nagaland Kohima-797001

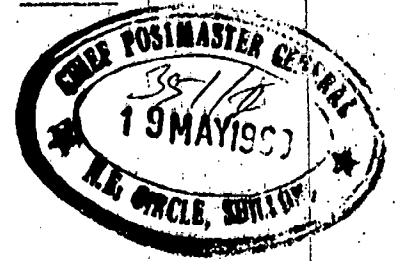
Yours faithfully,

(K. R. DAS)
(K. R. DAS)

Annexure 6 / 16

REGD.

MINISTRY OF COMMUNICATIONS
DEPARTMENT OF POST
D.K. BHAVAN, SANSAD MARG,
NEW DELHI - 110001.



NO: - 4-52/98-PAP

Dated: 14-5-99

TO,

The Chief Postmaster General,
N.E. Circle,
SHILLONG.

SUB: - Payment of Compensation in lieu of Rent Free
Accommodation @ 10% of Pay in the revised scale
of pay.

Sir,

103/c. This is in continuation of this office letter of
even No. dt. 27.1.99 on the above subject. The case
has been examined in consultation with Deptt. of
Expenditure, Ministry of Finance regarding payment
of 10% of pay as compensation in lieu of rent free
accommodation in respect of postal employees posted
in Nagaland. In this regard you are advised to contest
and defend the case suitably in consultation with the
Standing Govt. Counsel. Ministry of Finance O.M. NO.
11015/4/86-E.-II(B) dt. 19.2.87 (Copy enclosed) on the
grant of compensation in lieu of Rent Free Accommodation
and as modified from time to time may also be kept in
view.

Progress of the case may be sent to this office
from time to time.

Encl: - A.A.

Yours faithfully,

(KARUNA PILLAI)
DIRECTOR (ESTT.).

Attended
Addl. Central Govt.
Standing Counsel.

R-7/Cir-7

भारतीय डाक विभाग/Department of Posts, India
 कार्यालय/Office of the C.F.M.G.N.E. Circle Shillong.

No. Bldg/5-1/76/Rlg Date Shillong, the 15th Apr. 2000

To

(1-5). The Director of Postal Services, Agartala/
 Aizawl/Kohima/Imphal/Itanagar/Kohima

(6). The Sr. Supdt. of Post Offices, Meghalaya Dn.
 Shillong.

(7). The Supdt. of Post Offices, Jharmanagar

(8). All Group Officer in C.O. Shillong.

Sub: - Grant of compensation in lieu of rent free
 accommodation.

A copy of Dte's letter No. 24-1/2000-PAP dtd.
 30.3.2000 on the above mentioned subject, is forwarded
 herewith for information, guidance and necessary action.

Encls: -1

(N.R. Soundarajan)
 Asstt. Director (Bldg)
 Circle Office Shillong.

10/4/00

14/4/00

Attended
 H. C. Chakraborty
 Addl. Control Gen
 Standing Counsel

18
Director of Postal Services
Nagaland, Kohima-737001

Annexure P

92

104

NO. A-E/HRA/ND/III

Dtd. Kohima the 18.4.2000.

To,

The Postmaster

Kohima etc

Sub: Grant of compensation in lieu of rent for accommodation.

A copy of Delhi office letter no. Bldg/5-1/76/Rtg.
dtd. 5.4.2000 alongwith New Delhi letter no. 2(R7)/97-E.II(B)
dtd. 21.12.1999 (sanctioning of finance Deptt of Expenditure) on
the above mentioned subject is sent herewith for inf.
guidance and necessary action.

Encl: as above.

[Signature]
Addl. Central Govt
Standing Counsel

[Signature]
Director of Postal Services
Nagaland, Kohima-737001

20 Annexure 10 784/c 119 (93)
CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.458 of 2001. / 2446 of 29-02 105

Date of Order : This the 8th Day of August, 2002.

THE HON'BLE MR. JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN.

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

1. All India Postal Employees Union
Postman and Grade-D, represented by the
Divisional Secretary Md.Firoz Alam
Divisional Branch, Kohima-797001.

2. All India Postal Employees Union
Class III (Including ED)
Divisional Branch, represented by the
Asstt. Divisional Secretary
Mr.Razuzaki Phinyo
Kohima - 797001.

. . . Applicants.

By Sr.Advocate Mr.B.K.Sharma & Mr.S.Sarma
Mr.U.K.Nair & Ms.U.Das.

- Versus -

1. Union of India
Represented by the Secretary
to the Government of India
Ministry of Communication
Deptt. of Posts.
New Delhi.

2. Director General of Posts
New Delhi.

3. Chief Postmaster General
N.E.Circle, Shillong.

4. The Director of Postal Services
Nagaland Division
Kohima - 797 001.

. . . Respondents.

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

O R D E R

CHOWDHURY J.(V.C.) :

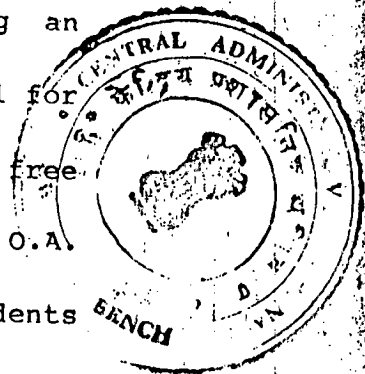
This is an application under section 19 of the
Administrative Tribunal's Act, 1985 assailing the
legality and validity of the Office Memorandum dated
12.11.2001 issued from the Office of the Chief

Contd./2



106
Postmaster General, N.E.Circle, Shillong relating to grant of compensation in lieu of rent free accommodation. The facts relevant for the purpose of adjudication are outlined herein below :

1. The applicant Nos.1 & 2 are the Office Bearers of the All India Postal Employees Union, Postman and Grade-D Divisional Branch, Kohima. The applicant No.3 is one of the affected person. Since the relief sought by the applicants are of similar nature they are allowed to join together in a single application interms of Rule 5(4) (a) of the C.A.T.(Procedure) Rules 1987. The applicants earlier moved the Tribunal by filing an O.A.2/1994 praying for a direction from the Tribunal for payment of compensation in lieu of rent free accommodation. The judgment and order of the said O.A. dated 22.8.95 was implemented by the respondents authority and the applicants were conferred the benefits of compensation in lieu of free rent accommodation. According to the applicants, consequent to the 5th Central Pay Commission Recommendation the pay structure of the applicants stood revised. The said revision of pay scale was made effective from 1.1.1996. The applicants contended that pursuant to the revisison of pay scale they were entitled to get the revised rate of compensation i.e. 10% of revised rate of pay scale w.e.f.1.1.1996. But the applicants were getting the compensation i.e.10% of old pay scale. The applicants moved the authority praying for revision of compensation



21

96

w.e.f.1.1.1996 in lieu of free rent accommodation. The authority by its communication dated 4.12.1997 informed that the said compensation will be made in lieu of free rent accommodation at the old rate. The applicants made several requests to the authority and as a matter of fact, again moved this Tribunal by filing an O.A., which was numbered and registered as O.A.226/1998. The applicants, however, did not press for the said O.A. and the same was dismissed on withdrawal as it was pleaded that the reliefs as prayed for were already granted by memo dated 27.1.1999. The respondents interms of the said memo paid the arrears of compensation to the applicants. While things rested at that stage the respondents issued the impugned order dated 19.11.2001 communicating the order dated 12.11.2001 superceding the earlier order dated 27.1.1999 providing the benefit of 10% of pay. Hence this application assailing the legitimacy of the order.



2. The respondents contested the case and submitted its written statement. In the writtren statement it was pleaded that the communication dated 12.11.2001 was issued as the rate of rent free accommodation was revised by the Ministry of Finance, Deptt. of Expenditure vide their OM No.2(7)/97-E.II(B) dated 21.12.1999, which was taken after the President of India took a decision on the matter. It was stated that rent free accommodation @ 10% of basic pay was paid to the applicants till 30.6.1999. Thereafter, the rate of rent free accommodation was revised under Ministry of

Contd./4

Finance, Deptt. of Expenditure memo dated 21.12.1999.

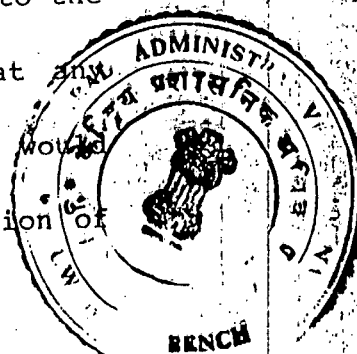
The revised rate was communicated vide CPMG letter No.Bldg/5-1/76/Rlg dated 12.11.2001. The respondents also pleaded that the recommendation of the 5th Central Pay Commission, the Govt. of India revised not only the basic pay but also other allowances including the rate of compensation in lieu of rent free accommodation which had been fixed at the lowest amount charges as licence fee for the entitled type of accommodation vide the Ministry of Finance, Deptt. of Expenditure OM dated 21.12.1999.

3. We have heard Mr.S.Sarma, learned counsel appearing for the applicants and also Mr.B.C.Pathak learned Addl.C.G.S.C. for the respondents at length. Admittedly, the impugned order dated 12.11.2001 and the consequent order dated 19.11.2001 were passed after an appropriate decision was taken by the Govt. of India. Mr.S.Sarma, learned counsel for the applicants submitted that the impugned action of the respondents in revising the pay scale is contrary to the law and spirit of the judgment rendered by the CAT in O.A. Nos.2/1994 and 226/1998. We have perused the whole context of the order of the Tribunal. In the order the Tribunal in its judgment did not pass any order for extending facilities of compensation in lieu of rent free accommodation ^{continually.} In the very order itself the Tribunal issued direction to continue to pay the same until the concession was not withdrawn or modified by the Govt. of India or till rent free

23

957

accommodation was provided. It is the Govt. of India, which is the competent authority to pass appropriate order on the matter. As a matter of fact, as mentioned in the communication dated 21.12.1999 the President of India took a decision on the matter and the respondents authority only implemented the same. The communication No.4-52/98-PAP dated 27.1.1999 issued by the Govt. of India, Ministry of Communication, Deptt. of Posts addressed to the Chief Postmaster General, N.E.Circle, Shillong itself indicated that payment would be subject to further clarification that would be obtained from the Ministry of Finance. The payments were made subject to the conditions that 'if it was found subsequently that any unintended benefit accrued to the petitioners, that would be recovered on receipt of such clarification/decision of Ministry of Finance.'



In the set of circumstances, the action of the respondents cannot be faulted as arbitrary and unlawful. We do not find any merit in this application. The application thus stand dismissed.

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

TRUE COPY

प्रतिनिधि

Sd/VICE CHAIRMAN

Sd/ MEMBER (Adm)

Adm. Control Govt.
Standing Council

30/8/02

Section Officer (A)

प्रमुख अधिकारी (स्वयंसेवा)
विशेष प्रशासनिक अधिकारी

विशेष प्रशासनिक अधिकारी
विशेष प्रशासनिक अधिकारी

विशेष प्रशासनिक अधिकारी