

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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Disposed Date-26/4/96

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SECTION OFFICER (Judl.)

CEATL AL
GUJARATI I

CRIMINAL APPLICATION NO. 63/96
MISC. PETITION/C.M.L.P. I.R. NO. 100/96

(C.A.)

Smt. I. Walling & Sons

vs.

Union of India Sons F. S. A. D. B. (S)

Adv. N. N. Trikha Advocate for
Applicant(s)

Mr. S. Ali, Sr. C.G.S.C. Advocate for
Respondent(s)

OFFICE NOTE	DATE	U R D E A
This application is in form and within time. C. F. of Rs. 50/- Deposited via (P.O. BD No. 5602) Dated 22.4.96	25.4.96	Learned counsel Mr. N.N. Trikha for the applicants and learned Sr. C.G.S.C. for the respondents are present. This application has been unlisted by Mr. Trikha on the ground that it has come from out station. Permitted. However, list tomorrow, 26.4.96, for consideration of admission in order to enable Mr. Trikha to submit petition under Rule 4(5)(b) of the Central Administrative Tribunal (Procedure Rules, 1987. as prayed for.
<i>(Signature)</i> Mr. Jagdish (S) M.P.T.V.	nkm	
	26.4.96	Learned counsel Mr. N.N. Trikha for the applicants. None for the respondents. Mr. Trikha moves this application on behalf of the applicants before to make the order dated 22.4.96 O.A.43/91 of this Bench applying to the applicants. Perused.

OFFICE NOTE	DATE.	ORDER.
Replies are awaited 8/8/96 v.no 934-96 d. 2.5.96	26.4.96	<p>tents of the application and the reliefs sought. Application is admitted. Issue notice on the respondents by registered post.</p> <p>List on 12.6.96 for written statement and further orders.</p> <p>Permission under Rule 4(5) (b) of the C.A.T (Procedure) Rules, 1987 granted vide M.P.51/96.</p> <p>60 Member</p>
Service Repairs are still awaited	12.6.96	<p>Mr. N. Tirkha for the applicant.</p> <p>Leave note of Mr. S. Ali, Sr. C.G.S.C. for S. Ali, Sr. C.G.S.C. for the respondents.</p> <p>Written statement has not been submitted. List for written statement and further orders on 22.7.96.</p> <p>60 Member (J) 60 Member (A)</p>
Service Repairs are still awaited	22-7-96	<p>None for the applicant. Sr. C.G.S.C. for Mr. S. Ali for the respondents seeks four weeks time for filing written statement.</p> <p>List on 16-8-96 for written statement and further order.</p> <p>60 Member</p>
Service Repairs are still awaited	16.8.96	<p>Mr. N.N. Trikha for the applicants.</p> <p>Mr. S. Ali, Sr.C.G.S.C. for the respondents.</p> <p>Written statement has not been submitted. Mr. Ali prays for further time for filing written statement. Allowed.</p> <p>List for written statement and further order on 20.9.96.</p> <p>60 Member</p>

20.9.96 Learned counsel Mr. N.N.Trikha for the applicants.

Learned Sr.C.G.S.C. Mr. S.Ali, for the respondents submits written statement today. Mr. Trikha submits that the case of the applicants are covered by the Judgement of the Tribunal dated 22.8.95 in O.A. No. 48/91 and series and requests for hearing of the O.A. today.

By consent of counsel of both sides hearing taken up today.

Counsel of both sides have completed their submissions. Hearing concluded. Judgement reserved.

60
Member

trd
20/9

1.10.96

10.10.96

Copy of the Judgment
issued to the parties
ref. D.N. 3435 to
3439 d. 10.10.96
3476 dtd. 15-10-96
pg

sh
10/10

None for the applicants. Mr. S.Ali,
Sr.C.G.S.C for the respondents.

Judgment pronounced. Application is allowed in terms of the order. No order as to costs.

60
Member

6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI-5.

O.A. NO. 63 of 1996
T.A. NO.

DATE OF DECISION 1.10.1996

Smt. T. Walling & Ors.

(PETITIONER(S))

Mr. N.N.Trikha

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr. S.Ali, Sr. C.G.S.C.

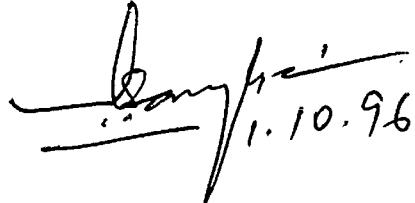
ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgment ? Yes
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ? No
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Administrative Member.


1.10.96

6

**CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH.**

Original Application No. 63 of 1996.

Date of Order : This the 1st Day of October, 1996.

Shri G.L.Sanglyine, Administrative Member.

For and on behalf of all the Telecommunication Staff posted in Nagaland.

Represented by Smt. T.Walling, Junior Supervisor, posted at Dimapur Telephone Exchange and Divisional Secretary to All India Telecom Employees Union, Dimapur.

2. Shri S.K.Ghosh. **Applicants**

By Advocate Shri N.N.Trikha.

- Versus -

1. The Union of India,
Represented by the Secretary
to the Govt of India,
Ministry of Telecommunications,
New Delhi.

2. The Director General,
Telecommunications,
Sanchar Bhawan, New Delhi.

3. The Chief General Manager,
Telecommunications, North East Circle,
Shillong.

4. The Telecom District Manager,
Nagaland Division,
Dimapur.

... **Respondents**

BY Advocate Shri S.Ali, Sr. C.G.S.C.

O R D E R

G.L.SANGLYINE, ADMINISTRATIVE MEMBER,

This application has been submitted for and on behalf of the Staff of the Department of Telecommunications posted in Nagaland praying to grant them Licence Fee at 10% of the monthly pay with effect from 1.7.1987 as allowed by the order dated 22.8.1995 of this Tribunal passed in O.A.No. 48/91, 2/94, 11/95, 37/95 and 105/95. Permission to join in this single application was allowed on 10.1.1996. The application was allowed on 26.4.1996.

Contd....

2. The applicants in this O.A. have stated that they earlier submitted an application No. 42(G)/89 for granting House Rent Allowance at the rate applicable to B Class cities to the employees of the P&T Department working in Nagaland and that the claim was allowed by this Tribunal in the order dated 31.10.90 which was upheld by the Hon'ble Supreme Court with little variation in the date of entitlement of House Rent Allowance, that is, with effect from 1.10.1986 in place of 18.5.1980. They state that they did not pray in that O.A. for granting of 10% Licence Fee to those employees who were entitled to rent free accommodation but who were not provided with such accommodation. Now in this O.A. they pray that on the strength of the aforesaid order dated 22.8.1995 passed by the Tribunal they may be allowed to draw Licence Fee at the rate of 10% of their pay with effect from 1.7.1987 or actual date of their posting in Nagaland upto date and to continue to draw the same until the concession is not withdrawn or modified by the Government of India or till rent free accommodation is not provided.

3. The respondents have contested the claim of the applicants. According to the respondents the applicants are entitled only /payment of House Rent Allowance in lieu of rent free accommodation at the rate applicable in B Class Cities but they are not entitled to get Licence Fee at 10% as the employees concerned are not governed by the general orders. The reasons therefor are (i) the applicants need not stay either within the compound of the office or within the vicinity of the office as their nature of duties are not such that they are required to attend office at any time within 24 hours; and (ii) the concession of rent free accommodation is given to the P & T employees in Nagaland under the special order of the department and they are not covered by general orders applicable to other departments.

4. The claim of the applicants to 'compensation in lieu of rent free accommodation' effective from 1.7.1987 is based on the O.M. No. 11015/41/86-E-II(B)/87 dated 13.11.1987 issued by the Ministry of Finance, Government of India. According to this O.M. Central Government employees belonging to Group A, B,C and D working in various classified cities/un-classified places are entitled to compensation in lieu of rent free accommodation as follows :

- " (i) Amount charge as licence fee for Government Accommodation as fixed in terms of Ministry of Urban Development (Directorate of Estates)'s O.M. dated 7.8.1987; and
- (ii) House Rent Allowance admissible to corresponding employees in that clasified city/unclassified place in terms of para 1 of this Ministry's O.M. No. 11013/2/86-E.II(B) dated 23.9.1986, for Central Government employees belonging to Groups 'B' 'C' and 'D' and para 1 of O.M. No. 11013/2/86-E.II(B), dated 19.3.1987 for Central Government employees belonging to Group 'A'."

The claim of the applicants in this O.A. is that they are entitled to the amount mentioned at (i) above. While learned Sr. C.G.S.C. Mr. S.Ali submits that this O.M. is not applicable to the employees of the Telecommunications Department who are covered by their own special orders, Learned counsel Mr. N.N.Trikha for the applicants submits that the order of this Tribunal dated 22.8.1995 in O.A. No. 48/91 and series particularly the order in O.A. No. 2/94 should be made applicable to the applicants. The O.A. No. 2 of 1994 was submitted by All India Postal Employees Union P(III) & A.D.A. Divisional Branch, Kohima and All India Postal Employees Union Postman Class IV and E.D., Kohima Branch. Nagaland. In that O.A. one of the prayers is that compensation in lieu of rent free accommodation as contemplated in the O.M. dated 13.11.1987 should be granted to them. That prayer was granted as follows :

- "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 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."

While granting the aforesaid reliefs the O.M. No. 12-II/60-ACC-I dated 2.8.1960 issued by the Ministry of M&W Government of India and the Office Memorandum No. 1(22)-E II(B)/60 dated 2.8.1960 issued in respect of the P & T staff as well as Para 2 of the O.M. dated 13.11.1987 were inter alia taken into consideration. The order dated 31.10.1990 passed by this Tribunal in O.A. No. 42(G)/89 was also taken into consideration and it was observed in para 51 of the judgement thus :

"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 that all the employees of P & T Department posted in Nagaland were entitled to get rent free accommodation or compensation in lieu thereof...."

Further after referring to the order dated 18.2.1993 of the Hon'ble Supreme Court in Civil Appeal No. 2705 of 1991 (U.O.I. vs. S.K.Ghosh & Ors.) it was observed in para 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 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.As. As stated earlier it follows from the judgment 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...."

5. Consequent to the above mentioned order dated 22.8.1995 in O.A.No.2 of 1994 the Ministry of Communications, Department of

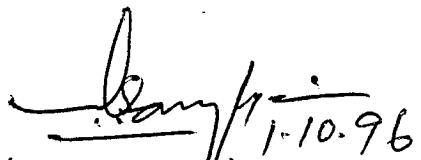
1.10.96

Post, in their D.O. letter No.4-40/87-PAP dated 8.3.1996 (Annexure C) addressed to the Post Master General, North Eastern Circle, Shillong have stated that they have agreed to implement the judgment in respect of the applicants in that O.A. Therefore, in principle, they agree that compensation in lieu of rent free accommodation at the rate equivalent to licence fee as prescribed is admissible to their employees. The applicants in this O.A. are similarly placed with the employees of the Department of Post posted in Nagaland. There is no information available to show that the aforesaid order dated 22.8.1995 in any of the O.As. covered by the order has been contested before the Hon'ble Supreme Court or that the operation of the order has been stayed. In the case of M.L.Ao & others it is seen that on 13.7.96 the respondents were considering filing SLP before the Hon'ble Supreme Court but on 13.8.1996 they decided to seek for time ^{for} implementation of the order dated 22.8.1995. Till date there is no definite information that SLP has actually been submitted against the order.

6. In the light of the above and respectfully following the judgement and order dated 22.8.1995 of the Tribunal (of which I was a party) passed in O.A. No. 2 of 1994 it is hereby held that the respondents are not justified in refusing 'Compensation in lieu of rent free accommodation' at the rate prescribed in the O.M. dated 13.11.1987 to the applicants on the grounds stated by them in their written statement submitted in reply to this application. The applicants in the instant application are entitled to similar reliefs as granted in O.A. No. 2 of 1994. Accordingly, it is ordered that the respondents shall pay the applicants licence fee in terms of the O.M. No. 11015/41/86-E-II(B) dated 13.11.1987 at the rate of Licence fee applicable to Nagaland with effect from 1.7.1987 or their respective date of actual working in Nagaland, whichever is later, and to continue to pay the same as long as they remain posted in Nagaland till the concession is withdrawn or modified by

the Government of India or till rent free accommodation is provided to the applicants, whichever is earlier. Further, the respondents are directed to pay the admissible arrears to the applicants within three months from the date ^{of} receipt of this order by the Respondent No. 3, the Chief General Manager, Telecommunications, North East Circle, Shillong.

The application is allowed. No order as to costs.


1-10-96
(G.L.SANGLYINE)
ADMINISTRATIVE MEMBER

Central Administrative Tribunal
for the North Eastern States

25

25 APR 1996

CASE NO. 63/96

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GAUHATI BENCH
GUWAHATI.

I N D E X.

Sl. No.	Description of Documents.	Page Nos.	ANNEXURE.
1.	Application	1 to 4	
2.	Combined decision of CAT dated 22.8.95.	5 to 54	'A'
3.	Order dated 31.10.90	55 to 62	'B'
4.	D.O.letter No.4-40/87-PAB dated 8.3.96	63	'C'
5.	VAKALATNAMA ..	64	
6.	List of Names of Applicants	65 to 73	
7.	Postal Order		


(N.N. TRIKHA)
Counsel for the Applicants.

Dated the, 24th April, 1996.

Petition of the Applicant
through Counsel Smt N.N. Trikha
Received today 25.4.96
DDT/MS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GAUHATI BENCH
GUWAHATI.

Case No.

(Ref: Case No. 429G)/89)

B E T W E E N

1. For and on behalf of all the Telecommunication Staff posted in Nagaland;

Represented by Smt. T. Walling, Junior Supervisor, posted at Dimapur Telep-hone Exchange and Divisional Secretary to All India Telecom Employees Union, Dimapur.

(List of names enclosed) Smti S.K. Ghosh

..... Applicant.

-versus-

1. The Union of India, represented by the Secretary to the Govt. of India, Ministry of Telecommunications, New Delhi.

2. The Director General, Telecommunications, Sanchar Bhawan, New Delhi.

3. The Chief General Manager, Telecommunications, North East Circle, Shillong.

4. The Telecom District Manager, Nagaland Division, Dimapur.

..... Respondants.

1. Particulars of Orders Against which the Application is made.

This is a fresh application for the grant of Licence Fee @ 10% of the monthly pay w.e.f. 1.7.87, as allowed by the Central Administrative Tribunal, Gauhati Bench in cases Nos. O.A.48/91, O.A.2/94, O.A.11/95 and O.A.105/95.

A copy of the combined decision dated 22.8.95 of the Hon'ble Tribunal made at KOHIMA is enclosed and marked as ANNEXURE 'A'.

2. JURISDICTION OF THE TRIBUNAL:

Applicant declares that the subject-matter of the Petition is within the jurisdiction of the Tribunal.

3. LIMITATION:

Applicant further declares that the application is within the limitation period.

4. FACTS OF THE CASE:

a) The applicants earlier filed a petition which was registered as No.42(G)/89 for declaration of various places in Nagaland as 'B' Class Cities for the purpose of House Rent Allowance and the Hon'ble Tribunal passed an order on 31.10.90 allowing the application.

A copy of the order dated 31.10.90 is enclosed and marked as ANNEXURE 'B'.

b) The Union of India, then filed an appeal before the Supreme Court, but the Hon'ble Supreme Court up-held the order dated 31.10.90 passed by the Tribunal with little variation in the date of entitlement i.e. arrears were allowed with effect from 1.10.86 and not from 18.5.80.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:

a) Inadvertently in the first application No.42(G)/89 the applicants did not pray for the 10% Licence Fee to those employees who were entitled to rent-free accommodation but no such accommodation was provided to them.

b) Very recently the Hon'ble Tribunal has allowed this 10% Licence fee on the basis of an Office Memorandum No.11013/2/86-EII(B) dated 23.9.86 issued by the Ministry of Finance, Govt. of India, consequently with the recommendations of the 4th Central Pay Commission and order No.11015/41/86-EII(B)/87 dated 13.11.87 to four departments of the Central Government, whose employees are posted in Nagaland.

(As discussed at page 5 (O.A.48/91)
of the Combined Judgement dated 22.8.95)

6. DETAILS OF REMEDIES EXHAUSTED:

It is respectfully submitted that the Applicants apprehend that the Government of India will not entertain any such request till the Hon'ble ~~tribunal~~ passed any order on the subject and hence this question does not arise.

7. MATTER NOT PREVIOUSLY FILED OR PENDING WITH ANY COURT.

The applicant declares that this is the first time, the applicants are approaching the Tribunal and no application/case has been filed in any other court.

8. RELIEF SOUGHT:

All the employees of the Telecommunications Department, posted in Nagaland and being now represented by the above applicant through the Telecom Employees Union be allowed to draw 10% Licence fee of their pay with effect from 1.7.87 or actual date of posting in Nagaland upto date and continue to draw the same until the concession is not withdrawn or modified by the Government of India or till rent-free accommodation is not provided.

9. INTERIM ORDER, IF ANY PRAYED FOR:

Since the Hon'ble Tribunal has allowed the employees of the other Central Govt. departments, viz. Geology Survey of India, Department of Posts, Census Department, Nagaland, Kohima, S.I.B., Kohima etc, the benefit of 10% Licence fee in lieue of rent-free accommodation not provided for, the Tribunal may be pleased to order the release of this benefit to the Applicants of the Telecommunications department pending final hearing/ disposal of this Application, as is allowed to the employees of 24th. of Post. and contained in ANNEXURE - 'C'

10. The Counsel of the applicants desires to have oral hearing at the admission stage.

11. That a postal order No. 634097 dt. 23.4.96 for Rs.50/- is attached herewith as the Application fee.

12. LIST OF ENCLOSURES:

- a) Copy of the Combined Order dated 22.8.95. - ANNEXURE 'A'.
- b) Copy of the order dated 31.10.90 - ANNEXURE 'B'
- c) Copy of D.O.letter No.4-40/87-EAP dated 8.3.96 from Mrs. Kanwal Verma, Dy. Director General (TNE), Department of Posts, Dak Bhawan, New Delhi (Ministry of Communications) addressed to Shri G.S.Misra, Post Master General, N.E.Circle, Shillong showing the release of this benefit of 10% licence fee to their employees. ANNEXURE - C

- VERIFICATION -

I, Shrimati T.Walling, working as Junior Supervisor, Telephone Exchange, Dimapur, Nagaland and representing all the employees of the Telecommunications department in my capacity as Divisional Secretary, All India Telecom Employees Union, Dimapur, do hereby verify that the contents of paras 1,4,5,6,7, 11 and 12 are true to my personal knowledge and paras 2,3,8,9 and 10 believed to be true on legal advice and that I have not suppressed any material fact.



(Smt. T. WALLING)

Dated the, 24th April, 1996.

Original Application No. 48 of 1991 (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 2nd day of August, 1995, at Kohima.

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

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

Original Application No. 48/91 (Nagaland).

Shri M. Tepdon Ao & 46 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, [REDACTED]
[REDACTED]
Asha Kutir,
Laitumkhrah,
Shillong-793003
4. The Director, Geological Survey of India, Operation Manipur-Nagaland, Dimapur.

.... Respondents

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

70/1
(1) 1995-14)

Advocates
Dimapur-78615

C.A. No. 2/94 (Nagaland).

1. All India Postal Employees Union
P(III) & A.O.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.

C.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. Sharma with M/s M.K. Choudhury and Mr. S. Sarma.

-Versus-

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.

C.A. No. 37/95

Shri N. Aier,
Assistant and 126 Others 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 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.

CERTIFIED TRUE COPY

D. Trikha
(D. Trikha)
Advocate
Dibrugarh-785001

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
- ✓ 4. The Director,
Geological Survey of India
Operation Manipur-Nagaland,
Dimapur

Respondents

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

Judgement

CHAUDHARI J. (V.C.).

All these applications relate to similar claim made by Group C 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.

2. The case of the applicants is that 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(8)/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(8) 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(8)/87 dated 13.11.87 and
3. Earlier decisions of Central Administrative Tribunal, Central 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

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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 G.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 basic 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

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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 those 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 to 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 applicants

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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 rates 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 rates meant for 'C' Class cities they have denied payment at the rates 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 rates 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 inter alia are as follows :

- i. 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.

6. 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 at the rate 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 House Rent Allowance

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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 are not party to O.A. 42 (G)/89 although similarly placed with those applicants and their grievance is that they are not being given benefit of

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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 judgment 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 of May 1991. He has 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.

Points

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

eligible to the concession of Rent free accommodation in the service of the Central Government.

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- ii. what are the components of the compensation payable in lieu of the rent free accommodation where it is not made available and what quantum ?
- iii. Whether the licence fee as one 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.Ali the learned Sr. C.C.S.C. representing Union of India in all these cases has strongly relied upon an old O.M. G.I. M.G.H. & W.ith 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 as 12-11/63 Acc I though copy annexed shows it as 12-11/60). Now after so many proceedings the respondents cannot describe it as a new

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 Nagpur (or vice versa)~~

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 submitted by the learned Advocates of the

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

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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)-C-II (B) 64 dated 27.11.65 as amended from time to time for the Compensatory (City) and House Rent Allowance's 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 rent free accommodation where such accommodation is required to be provided. It does not make any reference to eligibility for getting that concession. Rather the words "Other than those provided with Govt. owned/hired accommodation" make it inapplicable to that category of employees who are eligible for rent free accommodation. The claim of the applicants founded on the basis of this Memorandum appears to be misconceived to the extent House Rent Allowance is

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(B)/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 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

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 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

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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.s dated 26.11.49 and August 1951 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 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

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-E-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 NHIA. Much ^{water} has flown

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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 transient 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 :

(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 FR 5(21)(e)(i).

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.R. No. 12/11/60/ACC-I dated the 2nd August, 1960".

24. 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.

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 :

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"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".

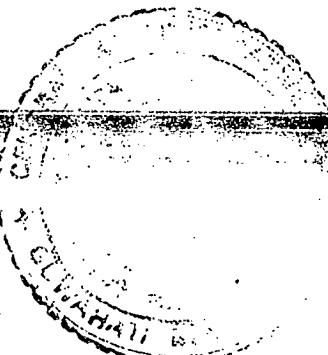
It therefore means that by virtue of Clause 6 of the O.M. dated 19.2.87 which applied to B, C & D Group employees the concession is confined to only those employees who are eligible to rent free Government accommodation under O.M. 12/11/60/ACC-1 dated 28.6.60. The Government of India thus did not depart from the criteria as was laid down way

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 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.M.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".



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 C.M. 11/95 is not treated as applicable (to SIO 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 Finance 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 NHTA 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

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 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 (8) dated 14.5.93 refers to Ministry of Finance O.M. No. 11016/5/82-E II (8) 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 - S18) other places in Nagaland are unclassified. The position prior thereto was governed by earlier orders of the Govt. of India.

33. The applicants in (O.A. 11/95) rely upon O.M. No. 11015/4/86-E-II(B) 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 (B)/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(B)/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 1.8.76 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 '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 :

i. (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

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Advocate
Dimapur-79715

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 house rent 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-previous 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. 42/89 (supra).

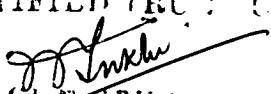
37. We may now turn to the judgement of the Hon'ble Supreme Court in Union of India V/S S.K. Ghosh & Ors. (Civil Appeal) 2705 of 1991) decided on 18.2.93 (which was the appeal filed against the

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 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".

39. [REDACTED] 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 :

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 (N. P. TRIKHA)
 Advocate
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"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. 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. Consequently, the respondents are entitled to be paid the 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

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, I&B Hqrs., New Delhi dated 23.3.94 in which in the context of the judgement of the Supreme Court and the Arbitration Award (amongst various orders) an 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 MHR/Ministry of Finance to extend the benefits to I&B personnel also posted in Nagaland at par with P & T employees on priority basis"

42. 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 classification of cities/ towns on the basis of 1991 Census for the purposes of grant of House Rent Allowance (and

CERTIFIED TRUE (COPY 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


(N. N. TRIKHA)
Advocate
Dimapur-797115

cities and towns would thus fall in unclassified category. However this classification prescribed for State of Nagaland 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 these 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 delivered 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

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

47. The case of the applicants (in O.A. 42/85) 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".

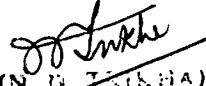
Para 4(b) "That where the Government servants, entitled to rent free accommodation not provided house/quarter by the Government, the rate of House-Rent Allowance to such employees was being regulated vide Director General, Post & Telegraph letter No. 41-17/61 P & A dated 8.1.62. Such category of staff while posted in Nagaland were 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

..... 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.

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(N. N. TIRKHA)

Advocate

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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 categorically deny that the employees posted in Nagaland were not eligible for rent free accommodation or

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)

..... has 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

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 81 & 82 (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

: 33:

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. 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 ~~restrict~~ resist the eligibility criteria.

51A. 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. 42/89 which is filed by Postal Employees who are fully covered by the decision in O.A. 42/89 (supra). Consistently with the view we have indicated on the applicability of O.M. 12-11/60 dated 2.8.60 if 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 ~~welcomed~~ melted out.

AMMENDMENT (OS) Secondly, we are of the opinion that the judgement of the Hon'ble

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(M. P. TRIKHA)

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(B)/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' in this section of the Ordinance date 8-2-1966

meant only those employees who were within the eligibility criteria prescribed in G.I. M.H and U, O.M. No. 12-11/60 ACC-I dated 2nd August, 1960 as is sought to be contended in the instant C.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-II-B dated 16.5.1994 (discussed below) also does not alter the above position as it does not contain fresh orders but

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IF IT IS TRUE (COPY) is based on the very O.M. 12-11/60 dated 2.8.60 which can no longer

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

(as held in O.A. 42 (3)(c)).

55. In O.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

SERIALIZED TRUE COPY at the rates applicable to Central Government Employees posted in

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'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 flat rate of licence fee was revised.

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(43)

4. All other conditions, laid down in this Ministry's O.M. No. 11015/4/86-E.II (B) dt. 19.2.87, 22.5.87 and 4.5.88 shall continue to be applicable, while regulating grant of compensation in lieu of rent free accommodation under these orders".

60. This notification continues the provisions contained in O.M. No. 12-11/60-ACCI dt. 2.8.60 (considered above). It means that these employees who are eligible to get the compensation in lieu of rent free accommodation under that O.M. will be governed by the formula now laid down with effect from 1.7.93. As already indicated above it is of no help to the respondents to deny the claim of the applicants so long as it is based on the O.M. dated 2.8.60. However it would be open to the Govt. of India to issue fresh orders without correlating it to the aforesaid O.M. and laying down a formula independently thereof as may be considered necessary.

61. We have referred in the course of above discussion to the material produced by the parties in all the applications together as well as to the record of C.A. 42(G)/89 which we called for, and we have done so bearing in mind the requirement of service jurisprudence and in order to avoid the possibility of conflicting decisions on the same points being rendered if each case were to be separately decided strictly on the basis of material produced by the parties in each case. That could be the correct way in a technical sense but would have frustrated the cause of justice as the questions arising in all the applications are almost identical touching service matter. We have not specifically referred to other material or the award referred to in the respective applications as that was not necessary to decide the questions in issue and would have material.

62. The above discussion also leads to the conclusion that the applicants who belong to different departments of Govt. are being discriminated vis-a-vis employees of Posts & Telecommunications Department in whose case the judgement of the Tribunal in C.A. 42/89 has been implemented.

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Advise -
Dated - 7.9.71

63. 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"

We 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 a 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.

64. 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 7.2.1983 as amended from time to time, by OM dated 5.2.1983 could be subject to the decision of the Supreme Court which was rendered on 18.2.1993 the same cannot be said about the reclassification introduced by OM No. 2(2)/93-E-11(A) dated 14.5.1993. It will be for the responde

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 O.M. 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 O.A. 40/91 and to set the same.

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

Point i	:	Yes
Point ii	:	Licence fee plus House Rent Allowance - Quantum as below
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 P & T Department
		As per final order below.

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

bill

ORDER

D.A. 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' (81-82) 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 rates 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 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.

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(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 (e) 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.

S. John
(N. P. TARIK)
Advocate
Dimapur-797115

48

D.A. 2/94

63
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 1.10.86 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 ad hoc 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 22.8.1995 to be regulated in accordance with clause (a) above.

(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.

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.

O.R. 11/95

62

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 '81 (81-82) 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

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(s) above.

(d) Directs 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

as applicable 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.

VERIFIED TRUE COPY

[Signature]
(N.P. TIRKHA)
Advocate
Dibrugarh-781005

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(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 which 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 (the actual date of posting in Nagaland if it is subsequent thereto as the case may be) upto date.

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

(d) Appears 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. 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:

(a) ~~1. (a) Since allowances of the respective applicants to the~~

~~Central Government employees in 'B' (81-82) 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.~~

CERTIFIED TRUE COPY


S. N. TRIKHA
Advocate
Dimapur-797115

(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 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.

TRUE COPY

Signature

SH. VICE CHAIRMAN

MEMBER (AJAN)

Secretary Officer (S)

General Secretary, P.M.C. (1978)

Central Council, P.M.C. (1978)

General Secretary, C.C. (1978)

General Secretary, C.C. (1978)

Registration No. 10

ANNEXURE "B"

CENTRAL ADMINISTRATIVE TRIBUNAL
MAHATI BENCH::::::::::GUWAHATI

Judgment. 55
Resd. No 6.

File No. 42 (62) / 89

Regd. No. 37112

D.C.A./CIVIL RULE/MISC. PETITION

Dated 14/11/90

REVIEW /PLACEMENT/CONTENT PETITION NO.

TRANSFER APPLICATION NO.

FINAL APPLICATION NO.

42 (62) / 89

S. K. Ghorai

APPLICANT/PETITIONER(S)

VERSUS

U.C. Z K. 202

RESPONDENT

The Telecom District Manager,
Nagaland Division,
Dimapur.

I am directed to forward herewith a copy of Judgment
order dated 8/10/90 passed by the Bench of this
Court comprising of Hon'ble Shri K.P.Acharya, Vice-Chairman
and Hon'ble Shri S.C. Ray, Member Administrative in the above
named case, for information and necessary action if any.

Please acknowledge receipt.

As above.

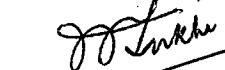
Yours faithfully,

shb 6.11.90

DEPUTY REGISTRAR (A).

shb

VERIFIED TRUE COPY


(N. K. Tarkha)

Advocate

Dimapur-797112

Original Application No. 40 (G)/89

Date of decision:- 3 October, 1990

1. Shri. S. K. Ghosh son of Late Satish Chandra Ghosh, resident of Dimapur Town, District Kohima and employed as Transmission Assistant Carrier Station, Dimapur;
2. Shri Dipak Chowdhury, son of late F.N. Choudhury, Sorting Asstt. Dimapur Post Office, Dimapur, resident of Dimapur.
3. And 105 others, a list of their names enclosed.

-Versus-

... Applicants.

1. Union of India, represented by the Secretary, Ministry of Telecommunications, New Delhi.
2. The Director General, Telecommunication, Sanchar Bhawan, New Delhi.
3. The Director General, Post, Dak & Tar Bhawan, New Delhi.
4. The Chief General Manager, Telecommunication, North-East Circle, Shillong.
5. General Manager, North-East Circle,
6. The General District Manager, Nagaland Division, Dimapur.
7. The Director of Postal Services, Nagaland, Kohima.

... Respondents.

For the Applicant:- Mr. N. N. Trikha, Advocate.

For the Respondents:- Mr. S. Ali, Sr. C. G. S. C.

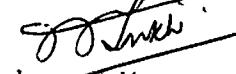
C O R A M:

THE HON'BLE SHRI K. P. AGHARYA, VICE-CHAIRMAN
AND

THE HON'BLE SHRI J. C. ROY, MEMBER (ADMINISTRATIVE)

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether Their Lordships wish to see the fair copy of the judgment?

F. D. P.D. COPY



(J. C. Roy)

1. 1000

8-1-79718

JUDGMENT.

69

J.C. ROY In this application under Section 3 of the Administrative Tribunals Act Shri S. K. Ghosh and 10 other Group 'C' and Group 'D' employees of the Telecommunications and the Postal Departments of Nagaland pray for an order declaring them eligible to draw house rent allowance as admissible to employees posted in 'E' Class cities. Briefly stated the facts of the case are that Telecom and Posts employees posted anywhere in Nagaland were provided with free accommodation. If they were not given Government accommodation, they were entitled to House Rent Allowance (HRA for short) as in 'E' Class cities. This was according to an order of Director General Post and Telegraph dated 8.1.1962. The question of payment of H.R.A. arose only when government quarters were not allotted to these employees. For the period January 1974 to December 1979 such employees drew HRA @ 15% of their pay and an additional H.R.A. @ of 10% of their pay. At that time the HRA for 'E' Class cities used to be @ 15% of the pay. From January 1980 to April 1980 the additional HRA @ 10% was discontinued and the employees were given HRA @ of 15%, that is, as in 'E' Class cities. The additional HRA drawn from 1974 to 1979 were also sought to be recovered from their pay. Being aggrieved some such affected employees filed petitions in this Bench against such recovery. These petitions constituted the subject matter of G.C. No. 154/88, G.C. No. 155/89 and G.C. No. 156/88 and were decided on 22.2.89. On the basis of the judgment of this Tribunal the recovery of additional HRA already paid was stopped. From May 1980 onwards the grant of HRA for Telecommunications and Postal Employees were governed by the orders contained in the Dy. Director General's P.R. letter dated 31.10.1980 addressed to the Postmaster

ost-and-farthest staff posts in Nagaland (not in the Line called 'B') who were not entitled rent-free accommodation are allowed to draw HRA at the rates applicable to 'B' Class cities. This used to be 1000. These employees have been drawing HRA at this higher rate. At that time Central Government employees posted in 'B' Class cities were allowed to draw HRA at 1000. By DG P&T's letter dated 31.12.71 the allowance were brought down suddenly to 700. Of course employees who were already drawing the allowance at the higher rate and were in service at Nagaland prior to 1.5.72 were protected by grant of personal allowance. But from the 1.5.72 when the basis of grant of HRA was changed (according to the recommendations of IV C.T.C.) they were given HRA clearly and openly at the lower rate applicable to 'C' Class cities. The applicants stress that nothing has happened during this period to warrant the downward revision. They point out that the employees of the State of Nagaland get house rent allowance at 17.5% of their basic pay (Annexure A-4), that the Railways continues to pay their employees posted in Nagaland HRA as admissible to 'B' Class cities (Annexure A-5) and that employees of the Khadi Commission, NEFCO etc. also draw HRA equivalent to that for 'B' Class cities. They therefore, pray for an order declaring them eligible to HRA at par with 'D' Class cities as laid down in Annexure A-7 which is a copy of Government of India, Ministry of Finance the Office Memorandum No. 11013/2/86-E-II(B) dated 23.9.86. Their further prayer is to order that this will be effective from May 1980 onwards.

After sending the written statement to the Central Government a written statement was filed, followed, on their behalf, by a clarificatory statement. In this none of the facts mentioned by the petitioners and summarized in the above paragraph were disputed. Their

E. IFED BUD 'OP'



(N. L. Mukherjee)

Advocate

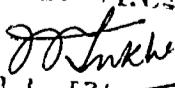
Dimapur-797115

general Shillong. A copy of this order appears as Annexure A-1 of this application. According to this decision, the HRA was reduced from 15% to 7½% of the pay but protection of the allowance at earlier rate was given to the employees who were borne of the roll and working in Nagaland on and before 1.5.1950. In their cases only in addition to 7½% HRA, another additional 7½% of allowance were continued to be paid as personal allowance. But anybody who was appointed or transferred to Nagaland after 1.5.1950 were entitled to HRA @ 7½%. After 31.3.1986, however, in the matter of HRA the IV Central Pay Commission's (IV C.P.C., for short) recommendations were implemented. According to these recommendations employees drawing basic pay from Rs. 750 to 3500 were divided into four groups and the cities were also divided into three categories of cities. The HRA was payable at determined rate for each block of pay at a lumpsum rate according to the three categories into which the cities were classified. Calculating HRA as a percentage of the basic pay was discontinued. But still the lumpsum amount in each block of pay bore some uniform relationship with the mean pay of the block. A copy of the Government order regulating the HRA IV C.P.C is available at Annexure A-2 of the petition. The petitioners claim that even after this change of calculation of HRA and adoption of the slab system, in effect, they are getting HRA as prescribed for 'C' Class cities and approximately @ 7½% of their pay. The petitioners, therefore, feel aggrieved and pray for payment of HRA at the same rate as prescribed for 'B' Class cities.

2. The petitioners' prayer is based on the fact that according to the D.G. F & T's letter dated 1.1.62 (Annexure A-3)

1. We heard Mr. N. N. Tirkha Counsel for the applicant and Mr. S. Ali, the Sr. Standing Counsel for Government of India in some details. There is no dispute that the former N.H.T.A. (Naga Hills and Tuensang Areas) and the present Nagaland was considered as a specially difficult area for rented accommodation. For the purpose of H.R.A. Government classified the cities and towns on the basis of their popularity and paid higher allowance in more popular cities because the rents structure in higher/such cities. Since Nagaland, irrespective 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. This situation continued from 1962. The rate of HRA may be reduced with a flux of time. The only reason for doing so can be that the special difficulties which existed from 1962 onwards have since been ameliorated. It can conceivably happen, with the development of the area in question. The housing stock may improve to such an extent that rented house at reasonable rate may be available. If that was the situation, a downward revision of HRA or even its complete discontinuance would have been justified. In this case, however, the respondent's case solely rests on what is stated as Annexure A-1 which is reproduced in full in the preceding paragraph. Since no such reason is given for the downward revision we have no other alternative but to hold that the revision effected in compliance to the document at Annexure A-1 is arbitrary and can not be sustained. We further find that

DETERMINED TRUE,


Mr. N. N. Tirkha
Advocate
Dimapur-797149

(61)

RS

-1-

contention is that the H.R.A. at 15% had to be reduced to 7½% as the Ministry of Finance issued a clarification on this subject for all Central Government employees posted in Nagaland and the Posts and Telecommunications departments have to fall in line with the general instructions of the Union Ministry of Finance. They further point out that the orders governing the Railways employees, Khadi Commission and NEFCO are not applicable to the present petitioner. But basically their case for reducing the House-Rent Allowance rests on a D.O. letter dated 31.10.61 written by the Dy. Director General (FB) of the Posts and Telegraph department and addressed to the Post Master General and the General Manager Telecommunication, Shillong. A copy of this D.O. letter is available at Annexure A-1, which is reproduced in full below:-

" The H.R.A. to P & T and other Central Government employees in Nagaland was recently discussed in the Ministry of Finance. The Ministry of Finance have not agreed to the continuance of the H.R.A. at 15% and mentioned that after the issue of clarification all the other Departments have revised H.R.A. to 7½% and the P&T Department should have also fallen in line.

After detailed discussions, the Ministry of Finance have agreed to the continuance of the allowance at the same rate to P&T staff who were in receipt of 15% H.R.A. prior to issue of the clarification by Ministry of Finance. Out of this 7½% will be treated as H.R.A. and the balance as allowance personal to the employees concerned. All the officials who have joined their posts in Nagaland after the issue of the clarification by the Ministry of Finance, including those recruited afterwards would be eligible only for H.R.A. at 7½%.

I kindly confirm that H.R.A. is being paid only to the staff who joined Nagaland after 31.3.1960. The payment of H.R.A. in the case of those officials who were receiving H.R.A. at 15% prior to April, 1960 may be revised as H.R.A. at 7½% personal allowance from that date.

Best wishes.

Sd/
D. D. G.(FB)

according to the formula adopted after the IV CFC, HRA is payable to the Central Government employees posted even unclassified places. From Annexure A-7 it is clear that this allowance at a flat rate is payable without production of rent receipt. 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. So long as this place of posting is not shown to have undergone any improvement in the matter of availability and rent for hired accommodation, any alteration of the rate of HRA will remain arbitrary and unjustified. In this view of the matter we feel inclined to allow the application.

5. The application is allowed. The petitioners shall be entitled to House Rent Allowance applicable to Central Government employees posted in 'B' Class cities which includes the classifications B-1 & B-2. The order contained in, the Dy. Director General's letter dated 30.10.1981 (Annexure A-1) is quashed. Arrears of the allowance counting from the 18th of May, 1980 shall be paid to the petitioners within a period of 120 days from the date of receipt of this order.

110 Cst:

SD/2/1

1/1/80
S.I.

SD/-

31.10.80

TRUE COPY

6/11/80
D.P. (Signature)
(C) Central Tribunal
G.C. Guwahati

6/11

IF I FIND TRUE 'O.K.'


(N.C.)
Advocate
Dibrugarh-784003

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(Ms.) KANWAL VARMA
D.Y. DIRECTOR GENERAL (TAG)

Shri G.S. Mishra
(Name written)
Postmaster General
North Eastern Circle
Shillong-793 001

D.O.No. 4-40/87-PAP

Department of Post, India
(Ministry of Communications)
Dak Bhawan, Sansad Marg,
New Delhi-110 001.

Dated 8/3/96

Dear Shri Mishra,

Kindly refer to your D.O. letter No. Vig-5/2/89-90 (P-II) dated 28/12/95 and dated 15/2/96 regarding payment of HRA at 'B' class city rates plus compensation @ 10% or pay in lieu of RFA to all employees posted in Nagaland in pursuance of judgement order dated 22/8/95 of CAT, Guwahati Bench.

2. This case was referred to Ministry of Finance for their examination and agreement/concurrence to the proposal. Replying to this they have agreed for the implementation of the judgement for the applicants only.

3. They have also observed to the effect, that review which is to be undertaken by your Office with regard to the continuance of RFA/HRA at 'B' Class city rates for the employees posted in Nagaland may kindly be expedited. In case, nothing is heard by the end of April, 1996, Ministry of Finance will be constrained to initiate such a review on their own.

4. Please take necessary action accordingly "on a 'Top Priority' basis.

Yours sincerely,

(KANWAL VARMA)

Shri G.S. Mishra,
Postmaster General,
North Eastern Circle
Shillong-793 001.

2. IF IT IS TRUE COPY
B. L. J. 1996
Advice
Dimand 7-7-96

Telephone

1.8
(Ms.) KANWAL VARMA
D.Y. DIRECTOR GENERAL (TAG)

7/1/96

D.O. No. 4-40X87-PAP

Dear Shri Mishra,

मुख्य अधिकारी
(मुख्य निदेशक)
प्रधान निदेशक
मेंट्रल टैगेज ऑफिस
मेंट्रल टैगेज ऑफिस

Department of Post, India
(Ministry of Communications)
Dak Bhawan, Sansad Marg,
New Delhi-110 001.

Dated 8/3/96

Kindly refer to your D.O. letter No. Vig-5/2/89-90 (P-II) dated 28/12/95 and dated 15/2/96 regarding payment of HRA at 'B' class city rates plus compensation @ 10% or Pay in lieu of RFA to all employees posted in Nagaland in pursuance of judgement order dated 22/8/95 of CAT, Guwahati Bench.

2. This case was referred to Ministry of Finance for their examination and agreement/concurrence to the proposal. Replying to this they have agreed for the implementation of the judgement for the applicants only.

3. They have also observed to the effect that review which is to be undertaken by your Office with regard to the continuance of RFA/HRA at 'B' Class city rates for the employees posted in Nagaland may kindly be expedited. In case, nothing is heard by the end of April, 1996, Ministry of Finance will be constrained to initiate such a review on their own.

4. Please take necessary action accordingly on a 'Top Priority' basis.

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Yours sincerely,

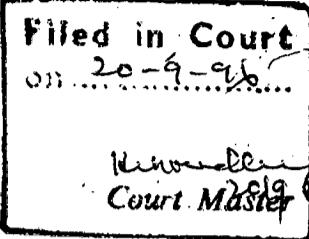
(KANWAL VARMA)

Shri G.S. Mishra,
Postmaster General,
North Eastern Circle
Shillong-793 001.

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78

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH



Filed by
Chowdhury
Sri. C. S. S. C.
20/9/96

O.A. No. 63 of 1996

Smt. T. Walling & Others

-versus-

Union of India & Ors.

-And-

In the matter of :

Written statement submitted by the
Respondent Nos. 1, 2, 3 and 4.

WRITTEN STATEMENT

The humble respondents submit the written statement as follows :

1. That with regard to the statement made in paragraphs 1, 2 and 3 of the application the respondents have no comments.
2. That with regard to the statements made in paragraph 4 of the application the respondents have no comments, as the same being matter of records.
3. That with regard to the statement made in paragraph 5 of the application regarding grounds for reliefs sought for the respondents beg to state as follows :

5 (a) In the first application No. 42(G)/89 the applicants pray for house rent allowance (HRA) as per rate applicable to the Central Govt. employees in 'B' class cities as per Central Administrative Tribunal, Guwahati Bench Judgement dated 31.10.1990 in O.A. No. 42(G)/89 which was confirmed by the Supreme Court vide order dated 18.2.1993 in Civil Appeal No. 2705 of 1991, the benefit was extended to the Telecom Employees posted in Nagaland. That time the applicants have not prayed for 10% licence fee in addition to the rent free accommodation as they are not entitled for the same.

5 (b). The concession of the rent free accommodation in Nagaland is given to the P & T employees under the special orders. Hence compensation in lieu of rent free accommodation in terms of Ministry of Finance O.M. No. F.3(2)-II (B)/73 dated 3.9.74 is not admissible to the employees concerned, Vide DOT's letter No. 9/2/80-PAT dated 19/23-4-1980. These employees are entitled for the payment of House Rent Allowance in lieu of rent free accommodation only at the rate applicable in 'B' class cities and not entitled to get licence fee 10% as the employees concerned are not covered by the general orders.

Copy of the O.M. dt. 3.9.74 is annexed herewith as Annexure-R1.

4. That with regard to the statements made in paragraphs 6 & 7 of the application the respondents have no comments on them.

5. That with regard to the statements made in paragraph 8 of the application regarding relief sought for the

respondents beg to state that the applicants are not entitled to 10% of Licence Fee as prayed for because they need not stay either within the compound of the office or within the vicinity of the office as their are nature of duties of not such in nature that they are required to attend office at any time within 24 hours.

That apart it is clearly indicated in the DOT letter No. 9/2/80-RAT dated 19/23-4-80 that the applicants cannot be entertained as it is clearly indicated in the DOT letter No. 9/2/80-RAT dated 19/23-4-80 that the concession of the rent free accommodation is given to the P & T employees in Nagaland under the Special order and it is not covered by the general orders.

Copy of the DOT letter dated 19/23.4.80 is annexed hereto and the same is marked as Annexure R₂.

6. That with regard to the statements made in paragraph 9 of the application the respondents beg to state that the applicants cannot compare themselves with other departments. As the Telecom Department's concern there is clear-cut instructions/orders that the P & T employees posted in Nagaland are entitled for the payment of House Rent Allowance in lieu of rent free accommodation only at the rates applicable in 'B' class cities. Since HRA has been granted to the P & T employees in Nagaland under special orders and is therefore not covered by the general orders and therefore they are not eligible for 10% Licence fee as prayed.

7. That with regard to the statements made in paragraphs 10, 11 and 12 of the application the respondents beg to state that they have no comments on them.

8. That the respondents submit that the application has no merit and as such the same is liable to be dismissed.

VERIFICATION

I, Sri C. Murmu, Vigilance Officer, office of the Chief General Manager, N.E. Telecom Circle, Shillong, respondent No. 3 in the Original Application, do hereby solemnly verify and state that the statements made in this written statement are true to my knowledge and belief and I have been authorised by all the respondents to sign this verification on behalf of the respondents No. 1, 2, 3 and 4.

I sign this verification on this the 18th day of September, 1996 at Guwahati/ Shillong.

W. M. M.
18/9/96
DEPONENT

सत्यता अधिकारी
गृह मंत्रालय का कार्यालय
शिल्लंग
Vigilance Officer
O/o. C.G.M.T., Shillong

~~ANNEXURE A~~

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OPY OF OFFICE MEMORANDUM NO. F.3(2)-E.II(B)/73 DATED THE 3RD
SEPTEMBER, 1974 FROM MINISTRY OF FINANCE (DEPARTMENT OF EXPENDITURE),
ADDRESS TO ALL MINISTRIES/DEPARTMENT OF GOVT. OF INDIA ETC.

Subject:- THIRD PAY COMMISSION's RECOMMENDATION-S REGARDING THE
GRANT OF COMPENSATION IN LIEU OF RENT FREE ACCOMMODATION
GOVERNMENT's DECISION THEREON.

The undersigned is directed to say that, in the light of the recommendation made by the Third Pay Commission in section IV of Chapter 56 of its Report regarding compensation in lieu of rent free accommodation the President is pleased to decide that the central Govt. employees who are entitled to rent free accommodation may be granted compensation, for the period during which they are not provided with such accommodation by Government, at the rate as specified below:-

(1) Employees who are working in cities classified for the purpose of grant of house rent allowance in accordance with this Ministry's O.M. NO.F.2(37)-E.II(B)/64 dated 27-11-1965 as amended/modified from time to time including the modification made by this Ministry's O.M. NO.2(55)-E.II(B)/74 dated 6-6-1974, will be entitled to the amount charged as license fee for Government accommodation from employees similarly placed but not entitled to rent free quarters and, in addition, to the house rent allowance admissible to corresponding employees in terms of the aforesaid orders. The total amount will, however, be limited to the rent actually paid by such employees.

(2) Employees working in other places will be entitled to the amount charged as license fee for Government accommodation from employees similarly placed but not entitled to rent free quarters.

Note:- For the purpose of the above orders the amount charged as license fee for Government accommodation will be taken as 10% of the monthly emoluments (7½% in the case of employees drawing pay below Rs 299) as laid down in the orders regarding recovery of license fee.

2. The employees referred in para 1(i) will not be required to produce rent receipt in support of their claim for compensation, if the amount claimed is equal either to the amount charged as license fee for Government accommodation from employees similarly placed but not entitled to rent free quarters or to the amount admissible as house rent allowance, if their pay does not exceed Rs 750/-. They will have to produce rent receipt if the amount claimed is more than the above amount or if their pay exceeds Rs 750/-. In such cases production and verification of rent receipt shall be compulsory.

As an exception to the above provision, these employees who are in receipt of a higher amount of compensation in lieu of rent free accommodation without production of rent receipt or those employees in whose case/s compensation in lieu of rent free accommodation under the existing orders is paid without production of rent receipt irrespective of their pay and who wish to continue to draw the compensation at the existing rates, will continue to receive such amount under existing condition as personal to them so long as they continuously serve in the same station.

The employees falling under para ~~16xxx~~ 1(ii), will not also be required to produce rent receipt for claiming the compensation if their pay does not exceed Rs 750/-.

3. 'Pay' for the purpose of these orders, will be pay as defined in F.R.9(21)(a). In the case of persons who continue to draw pay in the scale of pay which prevailed prior to 1-1-1973, it will include, in addition to pay in the pre-revised scales, dearness pay, dearness allowance and interim relief appropriate to that pay, admissible under the orders in existence on 31-12-1972.

4. These orders will apply only to the incumbents of post 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, housing and supply's O.M.NO. 12/II/60/200-I dated 2nd August August, 1960.

5. These orders will not apply to the employees of the Police organisations under the administrative control of the Ministry of Home affairs. In regard to civilian employees of Defence Establishment and Railway employees necessary orders will be issued by the Ministry of Defence and the Ministry of Railways respectively.

6. These orders will take effect from 1-11-1973 and payment of compensation in lieu of rent free accommodation made subsequent to that date will be adjusted according to these orders. For the period prior to 1-11-1973, the entitlement to the compensation in lieu of rent free accommodation will be regulated on the basis of the orders in force prior to 1-11-1973 with reference to the pay that would be admissible but for the introduction of the Central Civil Service (Revised Pay) Rules 1973.

7. In so far as persons serving in the Indian Audit and Account Department are concerned, these orders issued after consultation with the Comptroller and Auditor General of India.

8. Hindi version of these orders will issue separately.

ANNEXURE - R

Annexure

ANNEXURE B

INDIAN POSTS AND TELEGRAPHS DEPARTMENT
OFFICE OF THE GENERAL MANAGER: N.E. TELECOM CIRCLE: SHILLONG,
SHILLONG-793001.

REFD

TO:

1) All Divisional Engineers, N.E. Telecom, Circle.

2) All Supdts. Telegraph Traffic Divisions.

3) The C.S.C.T.O., Gauhati.

4) The Director Maintenance, Shillong.

The Director Satellite Shillong.

The Director Microwave Project, Gauhati.

The Chief Accounts Officer, G.M.T's office, Shillong.

The A.C.C.Om., G.M.T's office, Shillong.

O.(A&P), G.M.T's office, Shillong.

Asstt. Director Telecom (Staff), G.M.T's office, Shillong, Shillong.

Asstt. Director Telecom (TFC), G.M.T's office, Shillong.

No. EST. BE/R-89

Dated at Shillong, the

2-6-80

-5-80

Subject: HOUSE RENT ALLOWANCE AT NAGALAND.

Per

A copy of D.G.P&T, New Delhi letter No. 9/2/80-PAT dt. 19.4.1980 addressed to the PMG, Shillong and copy endorsed to this office is forwarded herewith for information. 23

As per above order, HRA @ 15% of pay may be paid to the employees of Nagaland provisionally pending a decision in the matter.

Compensatory House Rent @ 10% of pay drawn by the officials may be recovered in 12 equal instalments for the period for which it has been paid and it is please be ensured that no such commitment of Compensation is made to the officials in future.

Receipt of this letter may please be acknowledged.

(S. D. EY)

Asstt. Director Telecom (ESTT)
for General Manager, N.E. Telecom Circle
Shillong-793001.

J/ROY/31/5/80

con

Copy of the letter no. and subject as referred to above.

I am directed to state that the case about grant of house rent allowance at Nagaland has been considered in consultation of the Ministry of Finance. The concession of the rent free accommodation in Nagaland is given to the P&T employees under the special orders and hence compensation in lieu of rent free accommodation in terms of Ministry of Finance O.M. dated 3-9-74 circulated under this office letter No.30/1/74-PAT dated 30-9-74 is not admissible to the employees concerned. These employees are entitled for the payment of HRA in lieu of rent free accommodation only at the rates applicable in 'B' class cities contained in Col. 4 pm para 1 of the Ministry of Finance O.M. No. 2222-E.II(B)/60 dated 2-8-59 Go circulated under this office letter No. 41/17/61-P&A dated 8.1.1962 viz:-

<u>Pay Range</u>	<u>Rate of HRA.</u>
Below Rs. 75/-	Rs. 75/-
Rs. 75/- and above but below Rs. 100/-	Rs. 10.00
Rs. 100/- and above but below Rs. 200/-	Rs. 15.00
Rs. 200/- and above	7% of pay.

Since the HRA has been granted to the P&T employees in Nagaland under special orders and is not covered by the general orders, it was not correct on the part of the circle administration to modify the rates of HRA payable to these employees in Nagaland to 15% without consulting this office.

The question of continuance of the concession of rent free accommodation prescribing uniform rates of HRA in lieu of rent free accommodation in Nagaland is under consideration. While the employees concerned may continue to get HRA at 15% of pay provisionally pending a decision on the question the compensation in lieu of rent free accommodation paid to the employees concerned at 10% of the monthly emoluments (7% in the case of employees drawing pay below Rs. 200/-) under the erroneous impression that the orders contained in the Ministry of Finance O.M. dated 3-9-74 were applicable in the case of the employees, may be recovered from them in twelve equal instalments for the period for which it has been paid. No such compensation should be paid to them in future also.

Kindly acknowledge receipt.

Yours faithfully,

Sd/- (R. GOPALKRISHNAN)
ASSTT. DIRECTOR GENERAL (TE)