

(Reserved on 05.10.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Original Application No. 330/00311/2012

This the **30th** day of **October, 2018**

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

Ganpati Sinha, S/o Late Pratap Chand Sinha, Assistant Station Master,
Kadipur Station, Varanasi.

.....Applicant

By Advocate: Ms. Saumya Mandhyan

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Varanasi.
3. Sr. Divisional Operating Manager (G), North Eastern Railway, Varanasi.

.....Respondents

By Advocate : Shri Chanchal Kumar Rai

O R D E R

DELIVERED BY:-

HON'BLE MR. GOKUL CHANDRA PATI, (MEMBER-A)

By way of the instant original application, the applicant has prayed for the following main reliefs: -

- (i). to issue a writ, order or direction in the nature of certiorari quashing the order dated 03.02.2012 passed by respondent No. 3 annexed as Annexure A-1.
 - (ii). to issue a writ, order or direction in the nature of mandamus commanding the respondents not give effect to the order dated 03.02.2012 passed by the respondent No. 3.
 - (iii). to issue a writ, order or direction in the nature of mandamus commanding the respondents not to make any recovery whatsoever in pursuance of the impugned order dated 03.02.2012.”
2. The facts of the case, in brief, are that while the applicant was working as Assistant Station Master, Harduttpur, he was served with the show cause notice dated 20.08.2002 (Annexure A-3) for violation of provisions of para 1706

K(1) of Indian Railway Establishment Manual relating to HRA. The applicant submitted his reply on 06.09.2002 (Annexure A-4) denying the allegation on the ground that he was not under occupation of any railway quarter as well as the circumstances in which the Type-I quarter was occupied by the dependents of the Late Man Mohan Das who was father in law of the applicant.

3. Thereafter, without passing any order, the respondents started recovery of Rs. 960/- from the salary of the applicant. Against this action of the respondents, the applicant filed the OA No. 590/2004 and this Tribunal stayed the said recovery. OA No. 590/2004 was allowed by this Tribunal vide order dated 29.08.2011 (Annexure A-5) giving liberty to the respondents to pass a fresh order in accordance with law. Then the respondents passed the impugned order dated 03.02.2012 reducing earlier recoverable amount of Rs. 98,732/- to Rs. 72,551/-.

4. The instant OA has been filed challenging the order dated 03.02.2012 mainly on the following grounds: -

- The impugned order dated 03.02.2012 is illegal, arbitrary and against the rules.
- The wife of the applicant was given compassionate appointment before her marriage and her family was allotted a Type-I quarter in which the dependents of Late Man Mohan Das (father of the applicant's wife) were living.
- The applicant had given the details of HRA received by him alongwith the period as well the position with regard to the allotment of railway quarter, but the respondents did not consider the same and without verifying the record, the respondents are taking uniform 15% HRA w.e.f. 01.05.1984.
- From March, 1992, he was living in a separate quarter and thereafter wherever he was posted on transfer, since no quarter was allotted, HRA was paid but at the places where the applicant was posted, only 5% HRA was admissible. Therefore, application of uniform 15% rates is illegal.
- There is no basis for making such deduction because both husband and wife were not posted in the same station and there is no bar to claim HRA or a quarter in different stations.

- In the impugned order, the respondents have mentioned three notices but only one notice dated 26.12.2011 was served upon the applicant and the applicant had filed reply to the said notice.
- The circular dated 04.03.2002 of the Railway Board mentioned in the impugned order itself shows that no such recovery can be made.

5. The respondents have filed the Counter Reply stating that Type II quarter No. T/34 B was allotted to the applicant and Type I quarter was allotted to his wife at railway colony, Manduadih. Both were married in the month of April, 1985. The applicant was transferred to Hardattpur railway station in the month of March, 1992 but he did not vacate the railway quarter at Manduadih till 30.05.1992. Both the quarters were in possession of the wife and husband w.e.f. 01.05.1985 to 30.05.1992 for which damage rent of Rs. 18152/- is to be deducted as per Railway Board Circular dated 04.03.2002. The applicant was posted w.e.f. 01.06.1992 at Hardattpur, Ramnathpur and Rajwari railway stations and he was paid HRA, for which he was not entitled. The applicant was transferred to Varanasi City Railway station w.e.f. 01.07.1997 and stayed there upto 30.11.2002. His wife was posted in the office of Divisional Commercial Manager, North Eastern Railway, Varanasi and Type-1 quarter at Manduadih was in her possession. Since the posting of the applicant and the quarter at Manduadih are situated in the same municipal area, the applicant was not entitled for HRA, which was drawn by him from 01.07.1997 to 30.11.2002 amounting to a tune of Rs. 54399/-. It is stated that audit department raised the deduction of Rs. 98732/- but after examining the matter, the amount recoverable from the applicant was calculated at Rs. 72,551/-. It is further stated that as per paragraph 1(E) of the of the Letter dated 04.03.2002 (Annexure A-7), the applicant ought to have vacated the quarter at Manduadih because during the stay at Manduadih, after marriage from April, 1985 to May, 1992, either applicant or his wife should have surrendered either of the allotted accommodation but they have not done so.

4. The applicant has filed Rejoinder Affidavit reiterating the contents of the OA.

5. Heard Ms. Saumya Mandhyan, learned counsel for the applicant, who submitted that the wife of the applicant was posted in a different station, for which she was entitled for a quarter, while HRA was paid to the applicant. For same period, the applicant was also allotted a Type-2 quarter while his wife had a Type -1 quarter in a different station i.e .Manduadih, which was allotted to her before her marriage to the applicant in April, 1985. She was appointed under compassionate appointment after death of her father Late Man Mohan Das, whose family members were occupying that Type-1 quarter. It was submitted that the respondents did not follow the procedure while calculating the amount to be recovered which was calculated without considering the actual HRA disbursed to the applicant. It was further submitted that both the applicant and his wife were posted in two different stations, for which drawl of HRA by the applicant while his wife was occupying a Type-1 quarter was not irregular. Learned counsel for the applicant also filed written submissions citing the following judgments:-

- i. Civil Appeal No. 11527/2014 – State of Punjab and others Vs. Rafiq Masih (Whitewasher) decided on 18.12.2014
- ii. Shyam Babu Verma Vs. UOI – (1994) 2 SCC 521
- iii. Col. B.J. Akkara (Retd) Vs. Govt. of India & Ors – (2006) 11 SCC 709

6. Learned counsel for the respondents submitted that although both the applicant and his wife were posted in different stations, but both these stations were within the municipality area of Varanasi, within a distance of 7-8 Kms. Since the applicant's wife was allotted a quarter, the applicant was not entitled for another quarter and also not for the HRA.

7. The question to be decided in this OA is whether both the applicant and his wife will be considered to have been posted in the same station for the purpose of HRA when they are posted in two different places / station within the same municipal area. Regarding the penal rent of Rs. 18,152/- imposed for occupation of the quarter by the applicant from 01.05.1985 to 31.05.1992

when both the applicant and his wife were posted in Manduadih, as stated in the impugned order dated 03.02.2012 (Annexure A-1), it is clear that both of them were in the same station. The plea of the applicant that his wife was allotted the Type-1 quarter prior to her marriage and in that quarter family of her deceased father was staying is not acceptable, since no such intimation was given to the authorities by the applicant after his marriage and as per the rules, the applicant was not entitled for the quarter after his marriage. Hence, imposition of penal rent of Rs. 18151/- by the respondents cannot be faulted.

8. Regarding eligibility of the applicant for HRA during the period he was posted in a different station/place from the place of posting of his wife covering the period from 01.07.197 to 30.11.2002, as discussed in para 7 of the impugned order, it is seen that during this period, the applicant was posted in Varanasi City station whereas, his wife was working in the office of Divisional Commercial Manager, Varanasi and her quarter was in Manduadih. It is stated in the impugned order that although both the applicant and his wife were in different stations but since both the stations are within the same municipal area, the HRA to the applicant is not admissible, for which Rs. 54,399/- paid to the applicant towards HRA is liable to be recovered. In the counter reply filed by the respondents, similar plea has been taken. However, although a reference to para 1706 of Indian Railway Establishment Code has been made in the show cause notice dated 20.08.2002 (Annexure A-3), its copy or copy of any other rule or circular of Railway Board has not been enclosed by the respondents to show that if husband and wife are posted in two different places within the same municipal area, then the HRA will not be admissible to one spouse, if the other spouse is having a government accommodation. The applicant has enclosed a copy of Railway Board Circular dated 04.03.2002 (Annexure A-7), which stated that if the wife/husband has been allotted an accommodation by the Central Government/State Government, Autonomous Body/Semi-Government Organization at the same station, no HRA will be admissible irrespective of whether the employee concerned resides in that accommodation

or not. In this para, there is no provision specifying if one of the spouse has been allotted government accommodation the quarter to at a different station within the same municipal area, then the HRA is not admissible to the other spouse. This circular refers to place of posting and in this case, the applicant was posted in Varanasi City whereas, his wife's quarter was in Manduadih with her place of duty at the office the Divisional Commercial Manager, Varanasi. Although the both places are within the same municipal area, but technically these are two different stations for posting under the respondents. There is no rule or instruction cited by the respondents to show that both the places i.e. the place of postings of the applicant and his wife for the period from 01.07.1997 to 30.11.2002 are treated as the same place/station for the purpose of HRA, since both the places are located within the same municipal area.

9. In view of the above, refusal of HRA to the applicant from 01.07.1997 to 30.11.2002 amounting to Rs. 54,399/- is not supported by any rule or instruction of the Railway Board on record. Hence, it is held that the HRA will be admissible to the applicant for the period from 01.07.1997 to 30.11.2002 and the recovery from the applicant is not sustainable under law.

10. In view of the above discussions, the OA is allowed in part with the observation that the recovery of Rs. 54,399/- as per the order at para 7 of the impugned order dated 03.02.2012 (Annexure A-1) is not sustainable and accordingly, it is set aside. The respondents are directed to refund the recovered amount, if any, from the applicant in pursuance of the order dated 03.02.2012, within a period the two months from the date of receipt of certified copy this order. However, the recovery of Rs. 18,152 as per para 5 of the said impugned order is in order, as discussed in para 7 of this order.

11. No order as to costs.

(GOKUL CHANDRA PATI)
MEMBER-A

Anand...