

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 4241/2013

Reserved on: 31.07.2017
Pronounced on: 11.10.2017

Hon'ble Mrs. Jasmine Ahmed, Member (J)

Ashes Kiran Prasad
S/o Late Shri Dhanushdhar Prasad
Aged 55 years
Presently posted as Chief Traffic Officer/P&S
North Western Railway,
Jaipur and residing in Room NO.1
Loco Railway Officers' Rest House, Ganapati Nagar
Hasanpura Road, Jaipur-302006 ... Applicant

(Through Ms. Ayushi Kiran, Advocate)

Versus

1. The Union of India through
The Secretary,
Railway Board, Rail Bhawan,
New Delhi-110001
2. Member Staff,
Railway Board,
Rail Bhawan,
New Delhi-110001
3. General Manager,
N.F. Railway,
Maligaon (Assam) – 781012
4. General Manager,
North Western Railway
Jawahar Circle,
Jaipur-302017 ... Respondents

(Through Shri V.S.R. Krishna and Shri Shailendra Tiwary,
Advocates)

ORDER

This is a remanded matter. Earlier, this Tribunal in the detailed order dated 13-11-2014 dealt with the prayer for

- (a) HRA to the applicant for his stay at Guwahati at the rate applicable at the previous place of posting but based on his current salary drawn at Guwahati which is the rule for calculating HRA
- (b) HRA to the applicant for his stay at Jaipur at the rate applicable at Guwahati/Patna based on his current salary drawn at Jaipur.

The operative portion of the said order reads as under:-

"In the light of the above discussion, I hold and declare that the applicant is entitled to payment of HRA on the pay drawn by him in N.F. Railway, Guwahati, at the same rate as applicable to Patna. The respondents are directed to determine the difference in the HRA due and HRA paid during the periods of his working in N.F. Railway, Guwahati and to pay the same to the applicant within a period of three months from today.

In the result the OA is allowed to the extent indicated above. No costs."

2. Aggrieved by the above order both the applicant and the Respondents had moved the Hon'ble High Court – (i) the applicant in WP© No. 4679/215 against the non grant of HRA as per his prayer and (ii) the Respondents in WP © No 6202/2015 against the above order partly granting the relief to the applicant.

3. The two writ petitions were dealt with in a common judgment dated 29 Feb. 2016 by the Hon'ble High Court.

4. The brief facts of the case are that the applicant, belonging to Indian Railway Traffic Service, on being promoted to the Senior administrative Grade was posted from Eastern Railway to the NF Railway (from Patna to Guwahati) and remained posted there from 30-10-2003 to 26-10-2007 when he was transferred to the North-Western Railway, Jaipur. His claim that being promoted to the SAG and posted to Guwahati, he was entitled to the HRA which should be based and computed on the enhanced basic pay in the promotional post, was accepted by this Tribunal. When he was offered the accommodation at Guwahati, the same was declined by him and he was getting payment of HRA in terms of the policy applicable to the officers posted to the NF Railway which provides for retention of accommodation at the previous place of posting or the employee would be entitled to draw additional or second HRA at the same rate as paid prior to the officer being posted in the NF Railways. The Tribunal allowed the HRA for the period from 30-10-2003 to 26-10-2007 which was challenged by the Respondents in WP© No.6202/2015. This Writ Petition has been allowed by the Hon'ble High Court. In so far as the writ petition of the applicant, wherein the applicant claimed the HRA for the period from 27-10-2007 onwards, which claim was rejected by the Tribunal, the High Court remitted the matter for fresh decision on merit. The operative portion of the Judgment dated 29-02-2016 of the High Court thus is as under:

"18 In these circumstances, we would remit the question raised before us relating to payment of HRA for the period after 27-10-2007 to the Tribunal, for a fresh decision on merits. We clarify that we have not

expressed any opinion on the said aspect. Thus, an order of remand would be justified, for the Tribunal is the court of first instance. We would, however, clarify that the question of payment of HRA with regard to the period between 30th October, 2003 to 26th October, 2007, when the employee was posted at Gauhati in NF railway would not be examined as we have allowed WP© No. 6202/2015 filed by the Union of India and held that the employee Ashes Kiran Prasad would not be entitled to enhanced or higher HRA.

19. The writ petitions are accordingly disposed of. In the facts of the present case, there will be no order as to costs."

Attempt of the applicant challenging the above judgment through SLP © No. 28411-28412/2016 was dismissed vide order dated 03-10-2016.

5. Thus, the matter now gets constricted to the extent of admissibility or otherwise of HRA for the period beyond 27-10-2007.

6. Annexure A-2 of the OA is the order of the Respondents rejecting the claim of the applicant in respect of HRA for the period from 27-10-2007 when the applicant was posted to NWR at Jaipur. The claim of the applicant vide his representation dated 10-07-2013 is to the following effect:-

"I was posted here in Oct 2007. Since then I have not been given HRA at the rate applicable to my previous place of posting i.e. Guwahati even though my family does not reside with me. Since retention of quarter is permissible, I may please be granted HRA at Guwahati rate where I was posted prior to joining here in Jaipur. A person is allowed to retain his quarter because of certain extenuating circumstances. These circumstances do not change just because a person opts to stay in a house other than Railway Quarter. Opting to stay in a house other than a Railway Quarter is a perfectly valid legal option which

a person exercises. Hence I may please be paid HRA from the date I joined NWR till I remain posted in NWR."

7. The response to the above representation of the applicant is that Railway Instructions (vide Railway Board letter N. E(G) 2009/QR 1-2 dated 24-05-2012) provide for retention of Railway Quarter at the old place of posting and in the event of non availability of Railway Quarter/accommodation in New Zones an employee/officer would be entitled to HRA and in the case of the applicant, on his transfer to NWR in 2007, he had vacated the Railway Quarter at the Old Place of posting and hence his case is not covered under the extant Rules. In addition, the following are the further contentions raised at the time of arguments:-

- (a) The last place of posting of the applicant being NF Railway before posting to Jaipur.
- (b) Circular relating to retention of accommodation at the previous place of duty when posted to newly created zones, in the case of the applicant, the circular would not apply as his previous place of posting was only Guwahati and not Patna.
- (c) The applicant has also been residing in Officers Rest House at Jaipur during the period in question and as the rest houses come within the ambit of Government accommodation the same disentitles him to claim any HRA as per Railway Board letter dated 24-11-2004.

8. The argument of the applicant is as under:-

- (a) that his case falls within the purview of the circular No. E(G) 97 QRT-29 dated 15-09-1998 which provides that when officers on completion of their tenure at N.F. Railway are posted to a place other than the previous place of posting (i.e. where they have been retaining the quarter), they will be eligible for permission to retain Railway Quarter under their occupation as admissible in the case of permanent transfer.
- (b) In other words, for the purpose of retention of quarter, the case of such employees may be treated as if they have been transferred from the place they have been retaining the quarter and permission for retention of quarters considered as admissible in the case of permanent transfer.
- (c) He is thus claiming HRA for the period of his stay at Jaipur at the rate applicable at Patna, being the place of posting prior to the posting to the NF Railway the rate being the same as at Jaipur, being B class city.
- (d) As regards stay at rest house at Jaipur, payment of rental charges would suffice.
- (e) Further the policy of retention of Railway Quarter has been extended upto 31-12-2016 and the claim of the applicant is within the said period.
- (f) Both EC Railway and the N.W. Railway were new zones, there were no accommodation available both at

Patna as well as at Jaipur and the policy of retention of Railway Quarters at the previous place of duty is precisely on account of non availability of Railway Quarters in the Newly created zones.

- (g) The parent rule does not discriminate between a railway accommodation and HRA and allows an officer to opt for either of them. Thus, those who were staying in private accommodation at their previous place of posting should be allowed to stay at their previous place of posting.

9. Arguments were heard and documents perused. Certain peculiar situations in the event of creation of new zonal Railways are to be kept in regard to retention of accommodation and grant of HRA. Again, in respect of posting at NF Railways, further peculiar situations exist, on account of which two HRAs are admissible while posted in Guwahati etc., The question that arises for consideration is also that in the event of staying in the Officers Rest House, whether HRA is not permissible as contended by the respondents?

10. Order dated 15-09-1998 clearly provides for continued retention of accommodation in the previous place of posting not only when the posting happened to be in the NF Railways, but also thereafter when posting is out of NF Railways, the only exception being that the new place of posting shall not be the same place where such retention of accommodation is permitted. In the instant case, the applicant was posted from EC Railway to NF Railway and thereafter from NF to NW Railway. During his

posting in the NF Railway, his family was residing at Patna. The respondents clearly admit the fact of the applicant having been paid HRA during his posting at Guwahati, when his family was residing at Patna (Para 1(a) under heading Brief History of the Case refers). When posted at NW Railway, the permissibility of retention of accommodation at the previous place of posting (i.e. prior to posting at NF Railway) and admissibility of HRA during this period is covered by the provisions of letter dated 15-09-1998 relied upon by the applicant. Again, rejection of the case for HRA during posting at Jaipur is precisely on the ground that the applicant was accommodated at Jaipur in the Railway Transit Accommodation, as stated by the Respondents in reply to para 11 of the OA. Apparently, this entitlement is based on the basis of the clarification issued by the Railway Board vide RBE No. 158/86 vide Annexure R-2. Thus, the entitlement to draw HRA during posting at Jaipur is not hampered due to the family residing at Patna but according to the respondents, the applicant is not entitled to HRA during his posting at Jaipur as he was residing in the Railway Transit Accommodation. The question thus zeros down to whether the said Railway Transit Accommodation could be equated to a normal HRA. This Tribunal in OA No. 839/1990 (1991) 16 ATC 252 considered whether guest house accommodation would mean regular accommodation and staying in such Guest house disentitles the individual from claiming HRA during the period of such stay in the Guest House. It was held therein that a guest house cannot be equated with a regular accommodation. Other than self, no

one in the family or near relative is permitted to stay in such guest house. There are other restrictions too. Thus it was held that when an official is accommodated in a guest house, his entitlement to the grant of HRA is not hampered. In the case of Railways, as early as on 09-09-1971 (Letter No. 65/W2/RH/8) certain restrictions were stipulated in respect of stay in the rest house by officers on duty. The said stipulation has been reiterated in the Railway Board consolidated circular No.2005/LMB/3/34. New Delhi, Dated:18.05.06.and the same reads as under:-

(D) Occupation by close relatives of Railway officers on duty	Railway officers occupying a room in rest house on duty may be permitted to accommodate his close relative (s) alongwith him in the same room on payment of necessary charges and provided no additional room/accommodation for this purpose. These additional charges may be kept sufficiently high, even higher than those for family members as charged on certain Railways. Charges can be fixed in consultation with FA&CAO
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11. No such restrictions are stipulated in respect of regular or hostel accommodations. Hence, it is futile to argue that stay in the Officers Transit Accommodation disentitles the officer from claiming HRA, if he is otherwise entitled to the same. It is pertinent to mention herein that it was not the case of the respondents that there was an accommodation of the entitlement of the applicant that was available and offered to him but he had refused the same. Of course, a general consent/refusal without indicating or certifying availability of accommodation was asked for from the applicant and certain

others and the applicant refused the same. Nor was there any stipulation that in the event of availability of suitable accommodation if the same is refused, the same disentitles the individual from claiming the HRA. Thus the entitlement of the applicant to the grant of HRA has been intact.

12. In view of the above, the OA succeeds to the extent that the applicant is entitled to the HRA at the rate applicable to Patna, the previous place of posting prior to his posting at Guwahati, on the basis and strength of letter dated 15-09-1998 for the period from 27-10-2007 to 31-12-2016, during the currency of his posting at Jaipur. The respondents are directed to work out the same at the rate applicable to Patna based on his salary drawn at Jaipur and disburse the said amount to the applicant.

13. Under the circumstances there shall be no orders as to costs.

(Jasmine Ahmed)
Member (J)

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