

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No. 2747/2016
with
O.A. No. 2748/2016

Reserved on 12th October 2018

Pronounced on 12th October 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)

Ajay Kumar Mehra
Aged 61 years
S/o Late R.K. Mehra
R/o Flat No. 157, Ankur Apartment
Plot No. 7, I.P. Extn, Patparganj
Delhi – 110092.

....Applicant
(Mrs. Harvinder Oberoi and Mr. G D Chawla, Advocates)

Versus

1. Union of India
Through Secretary
Ministry of Statistics and Programme Implementation
Sardar Patel Bhawan, Sansad Marg
New Delhi – 110 001.

....Respondent
(Mr. Gyanendra Singh, Advocate)

ORDER

Since both these O.As. have been filed by the same applicant and against the same impugned order, *albeit* seeking separate reliefs, it was decided to hear them together and dispose them of by a common order.

2. Briefly, the facts of these cases are that the applicant, Ajay Kumar Mehra, at the relevant point of time, was holding the substantive post of Additional Director General (ADG) (Training) and

was Incharge of the Training Division of Central Statistical Office (CSO) located at Jeevan Prakash Building, Kasturba Gandhi Marg, New Delhi. The CSO comes under administrative control of the Ministry of Statistics and Programme Implementation (MoSPI) – respondent. The MoSPI has a training academy called ‘National Academy of Statistical Administration (NASA), which is now called ‘NSSTA’. The NASA is located at Greater Noida and is headed by a Director. The applicant was also placed as Incharge of the post of Director, NASA during his substantive posting as ADG (Training). NASA had a Camp Office at J.P. Building, New Delhi from where the applicant discharged his duties as Director, NASA. He continued to reside at New Delhi in his own house. The applicant held the post of Additional DG (Training) – cum – Director, NASA from February 2009 to February 2012.

2. The respondent issued impugned Annexure A-1 order dated 12.05.2016, which would read as under:-

“1. The matter regarding admissibility or otherwise of Training and Sumptuary Allowance admissible to Sh. A.K. Mehra, DG (retd.) during his posting in NSSTA (erstwhile NASA) has been examined.

2. Sh. A.K. Mehra, DG (retd.) was posted as Director (NASA)-cum-ADG (Training). His headquarter was NASA, Greater Noida. However, he had a camp office in JP Building, New Delhi and he resided in his own house in Delhi.

3. Sh. A.K. Mehra, DG (retd.) discharged the duties of ADG (Training) from his camp office at JP Building and discharged the duties of Director (NASA) from his headquarter office at Greater Noida while residing in Delhi.

4. The principal work of Sh A.K. Mehra, DG (retd.) both as Director (NASA) and as ADG (Training) at Delhi, was administrative in nature.

5. Training Allowance was not admissible to Sh. A.K. Mehra, DG (Retd.) during his posting at ADG, Training. None of his successors have been granted Training Allowance.

6. Sumptuary Allowance was, however, admissible to Sh. A.K. Mehra at the rate of Rs. 3500/- per month as Head of the Training Division.

7. Administration Division may deduct the total amount of Training Allowance paid to Sh. A.K. Mehra, DG (retd.) from the gratuity payable to him and deposit it in the Government Account.

8. The decision regarding release of balance amount of gratuity to Sh. A.K. Mehra, DG (retd.) will be informed in due course.

9. This has the approval of the Competent Authority.”

3. As Director Incharge of NASA, he has drawn sumptuary allowance as well as training allowance (@ 30% of basic pay) in terms of DoPT O.M. dated 05.09.2008 (Annexure A-8 (colly.). The applicant is aggrieved of the impugned Annexure A-1 order dated 12.05.2016 insofar as it denies him the HRA applicable to Delhi since his Headquarter has been declared as NASA, Greater Noida, and the training allowance @ 30% of the basic pay.

4. The impugned order also directs that the amount of HRA drawn at the Delhi rate and the training allowance should be deducted from his gratuity. As a matter of fact, an amount of ₹7,64,238/- has already been deducted from his gratuity towards HRA drawn by him.

Aggrieved by the impugned Annexure A-1 order, the applicant has approached this Tribunal in the instant O.As., in which he has prayed for the following reliefs:-

OA 2747/2016

- “i) quash and set-aside the order dated 12.05.2016, to the extent the same declares the head quarter of the applicant as Greater Noida and further the Hon’ble Tribunal may be pleased to declare the head quarter of the applicant as New Delhi as per his posting order.
- ii) quash and set-aside the orders dated 11.10.2013 and 24.09.2014 vide which the recovery was ordered without disclosing any reason to the applicant.
- iii) Consequential to the above, respondent may be directed to immediately reimburse the alleged excess HRA recovered by them amounting to Rs. 7,64,238/- along with interest @ 12% on delayed payment till the date of actual payment.”

OA 2748/2016

- “ii) Consequential to the above, respondent may be directed to immediately release the gratuity illegally withheld by respondent along with interest @ 12% on delayed payment till the date of actual payment.
- iii) To quash the order dated 30.04.2015 vide which the gratuity, due to the applicant had been withheld for a period of sixty days but was not released on the expiry of said sixty days.”

5. Pursuant to the notices issued, the respondent entered appearance and filed its replies in these O.As.

6. On completion of pleadings, these cases were taken up for hearing the arguments of the parties. Arguments of Mrs. Harvinder

Oberoi with Mr. G D Chawla, learned counsel for applicant and Mr. Gyanendra Singh, learned counsel for respondent heard.

7. The main contention of Mrs. Harvinder Oberoi, learned counsel for applicant was that the applicant's substantive posting was as ADG (Training) in CSO whose headquarters was at New Delhi, and as such he was entitled for HRA @ 30%. She further submitted that the applicant operated as Director, NASA from a Camp Office at New Delhi and he was also taking classes, and, therefore, in terms of DoPT O.M. dated 05.09.2008, he was entitled for training allowances @ 30% of the basic pay. She, thus, contended that the respondent has illegally attempted to deny the Delhi HRA to the applicant on the pretext that his headquarter was NASA, Greater Noida as also the training allowance.

8. *Per contra*, Mr. Gyanendra Singh, learned counsel for respondent argued that the applicant during his posting as ADG (Training) – cum – Director, NASA between February 2009 to February 2012 was required to operate from NASA headquarter at Greater Noida where designated house for Director was available and, thus, he was not entitled for HRA. He further contended that the applicant had not worked as a training faculty and, therefore, was not entitled for the training allowance. As such, the impugned Annexure A-1 order is absolutely in order directing recovery of the amounts paid towards HRA and training allowance to the applicant from his gratuity since the applicant superannuated from service on 30.04.2015.

9. I have considered the arguments of learned counsel for the parties and have perused the pleadings.

10. Admittedly, the applicant's substantive post was ADG (Training) in CSO at New Delhi. Therefore, I have no doubt that he was entitled for HRA @ 30% of his basic pay, as applicable to Delhi based government officials. As regards the applicability of DoPT OM dated 05.09.2008, referred to hereinabove, from a bare reading of this O.M., it would be clear that this is payable to the trainers drawn from Government, Universities and academic Institutions working as faculty members, other than permanent faculty in the National/Central Training Academies and Institutes for Group A officers. Obviously, the applicant was not a faculty member, nor was he taking regular training classes. The applicant, who was present in person in the Court, however, informed that occasionally he had taken the classes also, but not on regular basis. This would not entitle him to the training allowances. He can, at best, claim for some honorarium per class for the classes that he had taken.

11. In view of the discussions in the foregoing paragraphs, I dispose of this O.A. in the following terms:-

- a) *The applicant was entitled for HRA @ 30% of the basic pay for the period when he worked as ADG (Training) – cum – Director, NASA.***
- b) *He was not entitled for the training allowance @ 30% of the basic pay.***

c) *For taking classes occasionally, the applicant is entitled for receiving honorarium per class. For this, he is directed to submit a representation to the respondent within two weeks from the date of receipt of a copy of this order, which shall be disposed of by a reasoned and speaking order by the respondent within four weeks after its receipt.*

d) *The amount recovered from the applicant, i.e., ₹7,64,238/- from his gratuity towards HRA paid shall be refunded to him with interest @ 8% per annum, within four weeks from the date of receipt of a copy of this order.*

There shall be no order as to costs.

(K.N. Shrivastava)
Member (A)

/sunil/