

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.021/00347/2016

Date of CAV:23.10.2017.

Date of Order :03.11.2017.

Between :

Viswavasu John Prasanna Kumar,
s/o late V.Samuel, aged about 61 yrs,
Occ: (Retd.) Superintending Engineer,
Military Engineer Services, O/o the
Chief Engineer (R&D), Opp:JBS, Secunderabad
r/o Hyderabad.

... Applicant

And

1. Union of India, rep., by the Secretary to Govt.
M/o Defence, South Block, Sena Bhavan,
New Delhi.

2. The Engineer-in-chief, Military Engineer Services,
New Delhi.

3. The Chief Engineer, R & D,
Military Engineer Services, Picket,
Secunderabad.

4. The Controller General of Defence Accounts,
Ulan Batar Road, Palam, Delhi Cantt.,
New Delhi-110 010.

5. The Controller of Defence Accounts,
No.1, Staff Road, Secunderabad-500 009.

... Respondents

Counsel for the Applicant ... Mr.Siva

Counsel for the Respondents ... Mr.K.Venkateswarlu, Addl. CGSC

CORAM:

THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)

ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

The applicant is aggrieved by the rejection of his representation for payment of House Rent Allowance (HRA) for the period that he was staying in the Officer's Mess.

2. The applicant's case is that consequent on his transfer from Visakhapatnam to the 3rd respondent's office in Secunderabad, he was staying in the Officers Mess as his wife was in a non-transferable job at Visakhapatnam. At the time of his joining the office of the 5th respondent, he sought for permission for staying outside. Initially permission was granted for a period of two months. The applicant contends that during this period he was forced to stay in the officers mess as the respondents have not allotted any accommodation to him. He continued to stay as guest in the officers mess until his retirement on superannuation. The applicant submits that since the respondents have granted him permission to stay outside only for two months, they ought to have allotted a quarter as per his eligibility. However, he was not allotted any accommodation. In view of this, the applicant contends that he is entitled to HRA since he is not in occupation of a quarter. He has cited Para 4 of the General Rules and orders to show that since he was neither allotted any accommodation at the place where he was placed on transfer nor at the place where he was working prior to his transfer, he was entitled for grant of HRA. He also states that he has not made a claim for HRA as he was of the view that the respondents would oppose such a claim on the ground that he was staying in the Officer's Mess. However, this issue was adjudicated by the Hon'ble High Court of Karnataka when the official respondents sought to recover the HRA paid to an employee who was in occupation of the Guest House. The Hon'ble Court had held that HRA could not be denied to a person on the ground that he was staying in a Guest House. The first respondent who was also the respondent in

W.P.No.35065/1999 (S-CAT), dated 25.10.2004 implemented this order in respect of those who are working under the Chief Engineer (Air Force), Palam, Chief Engineer, Delhi Contonement and other places. However, since neither the decision of the Hon'ble High Court nor the decision of the first respondent granting HRA to similarly placed officers like the applicant was in the public domain, he was not aware of the fact that the Ministry of Defence had in fact paid HRA to the employees staying in the Officer's Mess. When he came to know of these orders, he submitted representations on 23.07.2015, 15.12.2015 and 19.01.2016. However, instead of settling the amounts due to him, he was informed that he had neither applied for Married Accommodation nor obtained No Accommodation Certificate (NAC) from the concerned and that HRA could have been claimed only on the basis of NAC. The applicant submits that the impugned action is contrary to the principles of law and the decision of the Hon'ble High Court of Karnataka in W.P.No.35065/1999 (S-CAT). Further, the grounds on which HRA can be denied to the Government servants are very specific and the applicant does not suffer from any of the disqualifications, which would disentitle him to receive HRA. He also submits that the judgment rendered by the Hon'ble High Court of Karnataka at Bangalore, would reveal that the employee therein had surrendered the quarter after allotment and stayed in the Guest House. Even in such circumstances, the Central Administrative Tribunal as well as the Hon'ble High Court had quashed the orders recovering HRA from the employee. The applicant's case is a better case inasmuch as he was not even allotted accommodation and therefore the question of surrender would not arise. He also submits that the question of furnishing a No Accommodation Certificate would not arise inasmuch as the respondents were fully aware of the fact that the applicant had not been allotted accommodation or was in occupation of Government residential accommodation. Further, the decision of the

Hon'ble High Court of Karnataka has been rendered on a principle and cannot be treated as a judgment in personam and the same is liable to be applied to all those who are similarly placed. Thus, he is squarely covered by the principle decided by the Hon'ble High Court of Karnataka. Hence, there is no legally tenable objection for denying him HRA, particularly, when the 1st respondent, who was a party to the Writ Petition, has implemented the orders of the Hon'ble High Court of Karnataka.

3. The respondents have filed a reply statement as well as an additional reply statement refuting the contentions of the applicant that he was forced to stay in the Officer's Mess till his retirement from service. They submit that the applicant had never applied or requested for Govt. Married Accommodation. Hence, the same was not allotted to him as per Para 6 (e) Note 2 of Allotment of Govt. Residence (R&D Common Pool) Rules 2014. The basic requirement for allotment of Govt. Married Accommodation is an application from the individual. The department was having sufficient entitled Govt. Accommodation for allotment but the same could not be allotted to the applicant in the absence of a formal application from him. Further, the applicant was aware that the charges of guest room is low compared to the amounts that would be deducted against Govt. Accommodation. As married accommodation was available for occupation, the department is unable to claim/pay house rent as claimed by the applicant. The applicant has not given any intimation that his wife was not allotted any Govt. Married Accommodation at her place of work. Note 2 in Para 6 (3) of Allotment of Govt. Residence (R&D Common Pool) Rules 2014 states as follows:

“Note 2: Govt. Employees who are eligible for R&D Common Pool Accommodation, HRA should be made admissible only if they have applied for allotment of accommodation in

accordance with the prescribed procedure if any, but have not been allotted the same. If they do not submit application for allotment for accommodation or those after submitting such application refuse to accept the application offered/allotted or those who after having accepted such accommodation surrender the same, may not be paid HRA without obtaining "No Accommodation Certificate" from the competent Allotment Authority. Cases already dealt with will not be re-opened."

4. The respondents also submit that the judgment of the Hon'ble High Court of Karnataka cannot be universally applied to others based on some similarities/resemblances as the judgment is applicable to the particular case only based on the facts and submissions made before the Court of law. The circumstances of the present case are different inasmuch as the Government servant has never sought or applied for Government Married Accommodation. Since the applicant has not applied for Govt. Accommodation nor produced a No Accommodation Certificate to the administrative authorities, they were not in a position to grant/pay house rent. This has been clarified to the applicant by the 5th respondent. They also relied on HRA General Rules, which states that the grant of HRA shall be -

"To those Govt. Servants who are eligible for Govt. Accommodation, the allowances will be admissible only if they have applied for such accommodation in accordance with the prescribed procedure, if any but have not been provided with it, in places where due to availability of surplus Govt. Accommodation, special orders are issued by the Ministry of Urban Development from time to time making it obligatory for employees concerned to obtain and furnish "no accommodation" certificate in respect of Govt. Residential accommodation at their places of posting."

Further, as per the Ministry of Defence letter dated 12.12.2001, all the Central Government Departments are requested not to pay HRA to the Govt. Employees

until NAC is obtained from the office. They also state that the department was having sufficient entitled Govt. Accommodation for allotment to the applicant and the same could not be allotted to him since he had not applied for the same.

5. Heard the learned counsel on both sides and perused the record.

6. The learned counsel for the applicant heavily relied on the judgment of the Hon'ble High Court of Karnataka in which it has been held that even officers who are staying in Guest House/Officer's Mess are entitled to draw HRA. He also points out that the Annexure.R-2 the Allotment of Govt. Residences (R&D Common Pool), Rules 2003, pertain to the officers/staff of DRDO, whereas the applicant belonging to the Military Engineering Services and has no applicability in this case.

7. On the other hand, the learned counsel for the Respondents pointed out that as per Para 4 (a) (1) of FRSR Part-IV, HRA cannot be paid till the No Accommodation Certificate is furnished by the applicant. He also points out that the OA is not maintainable as the applicant had submitted his application for HRA for the first time on 23.7.2015, whereas he has been staying in the Officer's Mess in November 2012 onwards. The claim, as such, is time barred.

8. The applicant's main contention is that even though he stayed in the Officer's Mess, he is entitled for HRA and that the respondents have erred in rejecting his claim for HRA. He has placed heavy reliance on the judgment of the Hon'ble High Court of Karnataka in W.P.No.35065/1999 (S-CAT) dated 25.10.2004 to fortify the aforesaid claim.

9. A perusal of the aforesaid judgment shows that the Hon'ble High Court had held that recovery of House Rent Allowance drawn by the Government servant (the respondent in WP filed by the Union of India) cannot be effected for the following reason:

“The submission made by the learned counsel for the petitioners that the guest room in which the respondent was in occupation after surrendering the Quarters accommodation provided to him in the Hostel which is run by the petitioners shall be treated as accommodation cannot be accepted by this Court in view of the communication sent by the Government of India, Ministry of Defence at Annexure-A as the said Guest Rooms are governed by Chapter-6 of Scale of Accommodation of 1993.”

The Hon'ble High Court also upheld the entitlement of HRA even in cases of employees who, after having accepted the official residential accommodation, surrender the same. Para 6 of the judgment reads as follows:

“6. By careful reading of said sub-para, it makes very clear that, if the Officer of an employee of the petitioners are in occupation of an accommodation and the same is surrendered then, the said persons are entitled to claim the HRA.”

10. Thus, the principle that has been settled in the judgment of the Hon'ble High Court of Karnataka is that a Government servant, who is staying in the Officer's Mess/Guest House, is entitled to HRA and that a Guest Room cannot be treated as residential accommodation as Guest Rooms are governed by Chapter VI of Scheme of Accommodation 1993. Further, even if a residential accommodation is surrendered after allotment, the employee would be entitled to claim HRA.

11. However, from the material on record in the instant case, it is seen that the respondents have not rejected the claim of the applicant on the ground that he was disentitled to claim HRA as he was staying in the Officer's Mess. The

contention of the respondents is that the applicant neither applied for Married Accommodation nor obtained No Accommodation Certificate from the concerned authority and that HRA could have been claimed only on receipt of the NAC. The respondents have also relied on Rule 4 (a) (i) of the HRA General Rules in support of their contention stating that the entitlement for HRA would be for those Government servants who apply for accommodation in accordance with the prescribed procedure and have not been provided with accommodation.

12. The applicant has not produced any material to show that these objections are invalid or irrelevant. He would contend that the respondents on their own should have allotted a quarter to him as they had granted him permission to stay outside only for two months. This contention is unacceptable as the rule specifically casts a responsibility on the Government servant to apply for a quarter. The applicant has admittedly not submitted an application for allotment of Government quarters. It is, therefore, held that the applicant has not satisfied the basic requirement for grant of HRA. Further, he has never raised a claim for HRA at the relevant point of time even though he was staying in the Officer's Mess from November 2012 onwards, and as per his own submission he was of the view that the respondents would oppose such a claim on the ground that he was staying in the Officer's Mess.

13. For the aforesaid reasons, it is held that the OA is devoid of merit and is accordingly dismissed. No order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

Dated: this the 03rd day of November, 2017

Dsn.

