

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

O.A. No.021/01561/2015

&

M.A.No.29/2017 in O.A.No.021/01561/2015

Date of CAV:06.10.2017.

Date of Order :03.11.2017.

Between :

1. Ordnance Factory Mazdoor Sangh,
rep., by the President Mr.B.Narayana,
s/o late B.Rajaiah, Personal No.786-7,
aged about 52 yrs, Occ:Fitter HS-I,
Ordnance Factory, Yeddumailaram,
Medak District.

2. B.Narasimha Reddy, s/o late Laxma Reddy,
Personal No.1502-8, aged about 46 yrs,
Occ:Machinist HS-II, Ordnance Factory,
Yeddumailaram, Medak District.

3. P.Sreeramulu, s/o late P.Laxminarayana,
Personal No.2198-4, aged about 53 yrs,
Occ:Moulder (Skilled), Ordnance Factory,
Yeddumailaram, Medak District.

... Applicants

And

1. Union of India, rep., by the Secretary,
M/o Finance, Dept. Of Expenditure,
North Block, New Delhi.

2. Union of India, rep., by the Secretary,
M/o Defence, South Block, New Delhi.

3. The Chairman, Ordnance Factory Board,
M/o Defence, Ayudh Bhavan, 10-A,
Shaheed Khudiram Bose Road,
Kolkata-700 001.

4. The Additional Director General,
Ordnance Factory Board,
Armored Vehicles Head Quarters,
M/o Defence, Avadi, Chennai,
Tamilnadu-600 054.

5. The General Manager, Ordnance Factory,
Yeddumailaram, Medak District-502 205.

6. The Controller of Finance & Accounts (Fys),
Ordnance Factory, Yeddumailaram,
Medak District-502 205.

... Respondents

Counsel for the Applicants ... Dr.A.Raghu Kumar

Counsel for the Respondents ... Mrs.K.Rajitha, Sr.CGSC

CORAM:

THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)

ORDER

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

The first applicant is the Union representing the employees of the Ordnance Factory (OF), Yeddumailaram and the 2nd and 3rd applicants are members of the said Union.

2. The undisputed facts of the case are that prior to 2007, the employees of the 5th respondent factory at Yeddumailaram were paid HRA at 5% of the actual basic pay drawn in view of the fact that the area in which the 5th respondent factory was located was identified as an unclassified city. Subsequently, on a demand raised by the Staff side in the 83rd Departmental Council of Joint Consultative Machinery (JCM) for payment of HRA at par with Hyderabad City, the matter was examined by the Ministry

of Defence in consultation with the Ministry of Finance (Dept. Of Expenditure) and after clarification that Yeddumailaram (Medak) and Eddumailaram (CT) (Medak) are one and the same city, it was ordered, vide Annexure.A-IX orders dated 14.05.2007, to pay HRA/CCA at Hyderabad rates since Yeddumailaram was part of the Hyderabad Urban Agglomeration (UA). Since then, the employees of the 5th Respondent Factory have been granted HRA/CCA at par with Hyderabad rates. Consequent on the constitution of the Greater Hyderabad Municipal Corporation (GHMC), the Ministry of Finance classified GHMC as A-1 class city. Consequently, the entitlement of HRA of the Central Government employees posted in GHMC was 30% of the Basic Pay and the same rate was also made applicable to the employees of the OF, Yeddumailaram. Thereafter, the Ministry of Finance, vide Annexure.R-3 I.D.Note dated 18.09.2013 and 02.04.2014 requested the Ministry of Defence to re-examine the status of Yeddumailaram/Eddumailaram, as to whether it is a part of Hyderabad (UA) as per Census 2001 or as per the latest notification issued by the State Government after re-organization of the municipal limits of Hyderabad/Greater Hyderabad. After re-examining the matter, the Ministry of Finance observed that Yeddumailaram/Eddumailaram is not a part of Hyderabad (UA) as per the Census 2001. Consequently, the Ministry of Finance issued Annexure.R-4 advise dated 01.12.2014 directing the Ministry of Defence to stop payment of HRA at Hyderabad rates to the employees of Ordnance Factory, Yeddumailaram, Medak, with immediate effect and to grant HRA at 10% as admissible to 'Z' Class cities till the issue is resolved in consultation with the Ministry of Finance.

3. It is the contention of the applicants that as per Annexure.A-VI rules the cities are classified as A1, A, B1, B2 and C for the purpose of HRA and CCA on the basis of Census 2001. The Ministry of Defence (MoD), vide their Annexure.A-VII OM dated

21.07.2015 re-classified the cities as X, Y and Z with revised entitlement at 30%, 20% and 10% of the basic pay. It is submitted that as per FRSR Part-V dealing with HRA and CCA, places within 8 Kms of a classified city are also entitled for HRA of the city subject to the condition that the District Collector certifies that the said place is dependent on the city for all essential supplies. In pursuance of the aforesaid rules, the Ordnance Factory took up the matter with the District Collector of Medak District, who issued the Annexure.A-VIII certificate dated 12.04.2007 stating that the Factory and the residents of the Factory Estate are dependent on Hyderabad City for essential supplies of Railway, Roadway High Education, Medical purposes and also for other purposes. ON the basis of the same, the 2nd respondent considered the entire issue and granted HRA at 30% to the employees of the Ordnance Factory, Yeddumailaram, vide Annexure.A-IX orders dated 16.05.2007. Since then, the employees of the Ordnance Factory have been enjoying the benefit of 30% HRA without any interruption. The applicants are therefore aggrieved by the action of the respondents in reducing their HRA entitlement from 30% to 10% on the ground that Yeddumailaram does not fall within Hyderabad (UA) as per Census 2001.

4. It is the case of the applicants that in response to their letter, the Directorate of Census vide his Annexure.A-XIII letter dated 01.06.2015 clarified that Yeddumailaram is treated as urban in 2011 Census. However, the first respondent on 8.5.2015 ordered that Yeddumailaram be treated as a 'Z' category place, which would be eligible only for 10% HRA instead of 30%. The matter was taken up by the applicant's union through its letter dated 23.6.2015. However, the same was rejected by the 2nd respondent on 8.7.2015. Thereupon, the applicant's union again represented vide their Annexure. A-XX letters dated 10.8.2015, 13.8.2015 and 26.9.2015 duly enclosing the

latest dependency certificate issued by the District Collector, Medak District dated 18.6.2015. It was also brought to the notice of the authorities that the Ministry of Railways vide their letter dated 18.9.2015 had issued orders for grant of 30% HRA at the rates applicable to the city of Hyderabad to their employees posted at Umdanagar, Medchal and Gundla Pochampally, R.R.District, on the basis of the Dependency Certificate issued by District Collector, Ranga Reddy. Although the 5th respondent had taken up the matter with the 2nd respondent, the claim was finally rejected and it was ordered to immediately implement the reduction of HRA to 10%. The applicants point out that the employees of the Ordnance Factory, Yeddumailaram, as a Class would be deprived of 30% HRA, which was paid to them from 2007 onwards only on account of the refusal of the respondents to re-examine the case keeping in view the changes that have occurred in the case of Hyderabad City after the formation of the GHMC and the Hyderabad Metropolitan Development Authority (HMDA). It was also pointed out that Yeddumailaram was covered under the area of HMDA. The applicants submit that the employees of the Ordnance Factory are entitled to 30% HRA as Yeddumailaram is part of GHMC/HMDA and also part of the Hyderabad Agglomeration and on the basis of the specific certificate issued by the District Collector, Medak District dated 18.06.2015. They therefore pray for a declaration that they are entitled for 30% HRA.

5. The respondents 2 to 5 have filed a reply statement stating that as directed by Ministry of Finance, the re-verification of the status of Yeddumailaram was done. The re-verification revealed that Yeddumailaram was not a part of Hyderabad Agglomeration as per Census 2001. Therefore, the Ministry of Finance issued an advice directing the MoD, vide Annexure.R-4 letter dated 01.12.2014 to draw HRA at 10% as Yeddumailaram was a 'Z' Class place and the respondent factory

was directed to comply with the directives of Ministry of Finance with immediate effect. They were also directed to approach the District Collector for showing Yeddumailaram as part of Hyderabad Urban Agglomeration. The District Collector, Medak, had issued dependency certificate on 16.01.2015 stating that Yeddumailaram is a census town according to the Population Census 2011 and is situated in the vicinity of the GHMC at a distance of approximately 25 Kms from Hyderabad City limits and 6 Kms nearer to the Hyderabad (UA) areas. Accordingly, the 5th respondent forwarded the dependency certificate to the MoD for continuation of payment of HRA/CCA at par with Hyderabad rates. However, the 6th respondent informed the 5th respondent to ensure that the payment of HRA be restricted at 10% in the pay bill from July 2015 onwards.

6. When the matter was again taken up with the MoD, it was pointed out that the certificate dated 16.01.2015 issued by the District Collector, Medak District, is in the form of a recommendation and does not carry the force of a Gazette notification/statutory order. Hence, it was advised that the statutory order of the Government of Andhra Pradesh be obtained, which superseded the notification dated 16.04.2007. The 5th respondent thereupon brought to the notice of the 3rd respondent that the Ministry of Railways in a similar matter had ordered for grant of HRA at par with Hyderabad rates to certain areas such as Umdanagar, Medchal and Gundla Pochampally, R.R.District, based on the dependency certificate issued by the District Collector. However, the 3rd respondent vide letter dated 23.09.2015 has called for a compliance report with regard to the payment of HRA at 10%.

7. The respondents further submit that as per the Fundamental Rules & Supplementary Rules Part-V, it is stated that the HRA will be payable to the Central

Government employees within the area of the Urban Agglomeration at the rates admissible in the classified city. The existing provisions for payment of HRA under Paras 3 (b) (ii) and 3 (b) (iii) of the OM dated 27.11.1965 will, however, continue to be applicable only at places which are within 8 Kms of the municipal limits of classified cities, but which are not included within the Urban Agglomeration of any city subject to fulfilment of usual conditions laid down.

8. A separate reply affidavit has also been filed on behalf of the first respondent. The first respondent submits that the Department of Expenditure vide OM dated 26.10.1977 had allowed HRA to the Central Government employees posted within the area of the Urban Agglomeration at the same rates as admissible in the classified city. The Department of Expenditure after considering the proposal forwarded by the MoD observed that no place with the name of Yeddumailaram was found in the Census report 2001. However, a town with the name Eddumailaram was there in Census 2001, which was erroneously taken as part of Hyderabad (Urban Agglomeration). The Department of Expenditure therefore, vide Annexure.R-4 I.D.Note dated 19.02.2007 advised the Ministry of Defence to check with the State Government whether Yeddumailaram and Eddumailaram were two different cities or both were one and the same and in case they happen to be same then HRA/CCA may be paid at Hyderabad rates as the same is part of the Hyderabad Urban Agglomeration. It was clarified by the Ministry of Defence that Yeddumailaram and Eddumailaram are one and the same city. In view of the said clarification and the fact that Yeddumailaram was part of the Hyderabad Urban Agglomeration, HRA/CCA at Hyderabad rates was granted to the employees of the factory. However, it was later observed that Yeddumailaram/Eddumailaram was wrongly taken as part of

Hyderabad Urban Agglomeration. As per the re-classification of cities/towns on the basis of the Census 2001, no place with the name Yeddumailaram/Eddumailaram was a part of the Hyderabad Urban Agglomeration. Eddumailaram (CT) in Medak District with a population of 13,592 as per Census 2001 was a separate place. It was an unclassified place up to 31.08.2008 with admissible rates of HRA as 5% of the basic pay and a 'Z' class town with effect from 01.09.2008 as per Annexure.R-8 of the Ministry of Finance OM dated 29.08.2008. Therefore, the Central Government employees posted at Yeddumailaram are eligible for HRA only at 5% up to 31.08.2008 and at 10% with effect from 01.09.2008. The first respondent also pointed out that the 5th respondent had taken up the matter with the Government of Telangana for issue of a Government Gazette Notification showing Ordnance Factory, Yeddumailaram, as a part of Hyderabad Urban Agglomeration as a special case. However, till date the State Government has not issued any Gazette notification. It is also submitted that as per the report of the Census 2011, Yeddumailaram is not part of Hyderabad Urban Agglomeration and that as per the letter of the District Collector, Medak, the Ordnance Factory is at a distance of approximately 25 Kms from Hyderabad municipal limits.

9. The applicants have filed a rejoinder rebutting the averments of the respondents particularly the fact that Yeddumailaram was an unclassified place as there is no mention as such in the OM dated 18.11.2004. They also point out that one of the sister factories of Ordnance Factory at Ishapore situated at 80 Kms from Kolkata was granted HRA at par with Kolkatta city way back in 1970. They also submit that the role of the Ministry is limited to the initial sanctioning and once it is sanctioned subsequent renewal is within the power of the administrative Ministry. In the instant case, the administrative Ministry instead of exercising the statutory duty cast upon it has simply acted on the compulsions of the Ministry of Finance, which is bad in law.

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

11. The learned counsel for the Applicants argued that from the report of Directorate of Census Operations, it is clear that a census town is considered as a constituent unit of the Urban Agglomeration and that the Hyderabad Urban Agglomeration is spread over across three Districts including Medak (04) District Code. Hence, the grounds taken by the respondents that Yeddumailaram is not a part of Hyderabad (UA) is totally untenable. He also drew our attention to the instructions issued by the Ministry of Railways granting 30% HRA to their employees working in Umdanagar, Medchal and Gundla Pochampally on the basis of the dependency certificate issued by the District Collector, Ranga Reddy District. Hence, the respondents are not justified in ignoring the dependency certificate issued by the District Collector, Medak dated 18.06.2015 in which it has been stated that the employees of Ordnance Factory, Yeddumailaram are dependent on the Hyderabad City for all its essential supplies and that payment of HRA on par with the employees of the Hyderabad City may be considered favourably.

12. Per contra, the learned Senior Central Government Standing Counsel pointed out that Yeddumailaram has not been included in the Hyderabad Urban Agglomeration or in the GHMC limits dated 16.04.2007. In these circumstances, Yeddumailaram is a 'Z' class city, which would be entitled to HRA at 10% of the basic pay only. Hence, there is no basis for the applicants to claim HRA at par with the Hyderabad City.

13. From the narration of facts as stated in the foregoing paragraphs, it is seen that since 2007 the employees of the Ordnance Factory, Yeddumailaram, were drawing HRA at par with Hyderabad City rates consequent on the decision taken in

the 83rd Departmental Council of Joint Consultative Machinery (JCM), Ministry of Defence, and in consultation with the Ministry of Finance (Department of Expenditure). From the Annexure.A-XIV letter addressed by the 5th respondent to the Principal Secretary, Municipal Administration & Urban Development, Govt. Of Telangana, dated 29.06.2015, it is seen that this decision was based on the Director of Census Operations, Govt. Of A.P. letter dated 12.08.2002 declaring Yeddumailaram of Sangareddy Mandal, as Census Town as per the 2001 Census and also the certificate issued by the District Collector, Medak, dated 12.04.2007. Subsequently, the matter was reviewed in the light of the finding that Yeddumailaram/Eddumailaram is not a part of the Hyderabad UA as per Census 2001 and it was ordered that HRA at 10% only is admissible to the applicants. Thus, it is clear that the reason for reducing the HRA of the applicants from 30% to 10% is due to the fact that Yeddumailaram is not a part of Hyderabad UA as per Census 2001.

14. Rule 3 (b) (iii) of the Annexure.A-VI HRA & General Rules provides as follows:

“(iii) Staff working in aerodromes, meteorological observatories, wireless stations and other Central Government establishments within a distance of 8 kilometers from the periphery of the municipal limits of a qualified city will be allowed house rent allowance at the rates admissible that city even though they may not be residing within those municipal limits, provided that -

NOTE 1. - Cases which attract provisions of Para 3 (b) (iii), should be referred to the Ministry of Finance (instead of the Ministries/Departments themselves granting same) for issue of general orders so as to ensure uniformity in the matter of application of the above proviso.”

The further clarification provided under Note.2 states as follows:

“Clarification 1. - It has been decided that the benefit of the concession of house rent allowance under para 3 (b) (iii) may be extended to the employees working in a place which though a

town panchayat is generally dependent for its essential supplies on a qualified city and is within the 8 Km limit of the periphery of the qualified city.

Clarification 2. - It has been decided in consultation with the Staff side of the National Council (JCM) that House Rent Allowance will also now be payable to the Central Government employees within the area of the Urban Agglomeration of classified city at the rates admissible in the classified city. The existing provisions for the payment of House Rent Allowance under paras 3 (b) (ii) and 3 (b) (iii) of the Office Memorandum, dated 27.11.1965, will, however, continue to be applicable only at places which are within 8 kilometres of municipal limits of classified cities, but which are not included within Urban Agglomeration of any city, subject to fulfilment of usual conditions laid down and subject to issue of specific sanctions therefor as before.

Clarification 3. - It was pointed out that in the certificate required to be obtained from the Collector of a District for the purpose of grant of house rent allowance under the aforesaid orders, it was to be inter alia certified that there was no other municipality within the 8 Km area in which the employees have to work and the same cannot be given where such a municipality exists even though the place is wholly dependent on the qualified city for its essential supplies. While no amendment of the existing provision is considered necessary, it has been decided that henceforth, the enclosed certificate may be obtained from the Collector in all cases where the grant of house rent allowance under para. 3 (b) (iii) is proposed. In all cases where the Collector certified that the area in question depends for its essential supplies on the qualifying city even though there may be another municipal area within the 8 km radius, Government would consider on merits whether grant of house rent allowance in such cases would be justified."

15. In the instant case, the District Collector, Medak, has furnished the required Dependency Certificate on 02.04.2007 and again on 18.06.2015 certifying that the Ordnance Factory, Yeddumailaram, is dependent on Hyderabad city for all its essential services and that payment of HRA/CCA to the employees of the Ordnance Factory may be considered on par with the rates of Hyderabad city. The District Collector's certificate dated 18.06.2015 also mentions that Yeddumailaram is almost contiguous to Muthangi and Isnapur which are included in Hyderabad (UA) according to the Population Census 2011. The Certificate also states that Yeddumailaram is a Census town situated at a distance of approximately 25 Kms from the Hyderabad city limits, whereas the aforecited HRA Rules stipulate that the benefit of the higher HRA would be available only at places which are within 8 Kms of the municipal limits of classified cities, but, which are not included in the Urban Agglomeration.

16. Thus, the Dependency Certificate is not strictly as envisaged in Rule 3 (b) (iii) of the HRA and General Rules. At the same time, it is noticed that the Director of Census, vide his Annexure.A-XI report has clarified as to what is the concept of Urban Agglomeration. At page 68 of the Paper Book, the concept of Urban Agglomeration has been explained as follows:

“URBAN AGGLOMERATION

The concept of Urban Agglomeration (U.A.) was first introduced in 1971 Census replacing the concept of township adopted in the 1961 Census. This concept of Urban agglomeration is continued since then and also in Census 2011.

The following are the possible different situations in which urban agglomeration is constituted.

An urban agglomeration is a continuous urban spread consisting of

> a statutory town with one or more contiguous outgrowths.

> two or more adjoining towns (of which at least one is a statutory town) with their outgrowths

The total population of all the constituents put together should not be less than 20,000.

In some cases Railway Colonies, University Campuses, Port areas, Military camps etc., have come up near a city or statutory town outside its statutory limits but within the revenue limits of a village or villages contiguous to the town. Each such area by itself might not have satisfied the minimum population limit to qualify as an independent urban unit but deserves to be clubbed with the towns as continuous urban spread. A Census Town is considered as a constituent unit of the Urban Agglomeration.

The area constituting urban agglomeration may change from the last Census depending upon the changing boundaries of the statutorily notified main urban units as well as the extent of the urban outgrowths.”

17. A plain reading of the above shows that a Census Town is considered as a constituent unit of the Urban Agglomeration. Thus, going by the aforesaid definition Yeddumailaram, which has been classified as a Census town, would ordinarily fall within the Hyderabad Urban Agglomeration. From the Annexure.R-20 Census Report 2011, filed by the 1st respondent, it would appear that several Census towns such as Isnapur and Muthangi (which as per the Certificate of the District Collector are contiguous to Yeddumailaram), have been included in Hyderabad (UA). It would have therefore been appropriate on the part of the respondents to have examined the reasons for not including Yeddumailaram, which is also a Census Town, in the Hyderabad (UA) before taking a decision to reduce the HRA from 30% to 10%. It is also observed that as the 5th respondent had addressed a letter to the Principal Secretary, Municipal Administration & Urban Development, Govt. Of Telangana on 29.06.2015 pointing out the classification of Yeddumailaram as a Census town and seeking a notification for including Yeddumailaram as part of Hyderabad Urban Agglomeration, the respondents ought to have obtained a reply or a clarification from the Government of Telangana before initiating action for reduction of HRA from 30% to 10%.

18. The other objections raised by the respondents is that the District Collector's dependency certificate does not carry the force of a Gazette notification and therefore cannot be the basis for grant of HRA at the rates admissible to the classified city. This does not appear to be a valid or a reasonable objection. The contention of the respondents that such certificate is not adequate and does not have the same strength or validity as a Gazette notification is not a reasonable objection particularly when the Dependency Certificate issued by the District Collector on 12.04.2007 has been one of the reasons for granting HRA at par with Hyderabad city, as evidenced from Annexure.A-XIV letter dated 29.06.2015. Further, when the Ministry of Railways, which is another Ministry under the Union of India has granted 30% HRA to the Railway employees working in Umdanagar, Medchal and Gundlapochampally on par with those posted in the classified city of Hyderabad (UA) ('X' class city) on the basis of the dependency certificate issued by the District Collector of Ranga Reddy District, the rejection of the Dependency Certificate issued by the District Collector, Medak, on the ground that it does not have the force of a Gazette notification does not seem to be proper. It would be necessary, particularly for the 1st respondent to examine the circumstances in which the Ministry of Railways has issued orders for grant of HRA at Hyderabad city rates even when Umdanagar, Medchal and Gundla Pochampally are outside GHMC/UA and based on the Dependency Certificate of the District Collector, Ranga Reddy, and clarify whether the orders of the Ministry of Railways are distinguishable on facts from the present case. The stand taken by the respondents 2 to 5 that the Ministry of Railways is a separate Ministry and that the orders issued by the said Ministry have no applicability is unacceptable.

19. Having regard to the discussions in Paras 16 to 18 supra, and more particularly the fact that a Census town is to be considered as a constituent unit of an Urban Agglomeration and that Yeddumailaram is a Census Town as per the Census 2011 , the Dependency Certificate issued by the District Collector, Medak, and also the decision taken by another Ministry of the Union of India for grant of HRA at 30% to places which are not falling within the GHMC limits/Urban Agglomeration, on the basis of the dependency certificate issued by the District Collector, Ranga Reddy, we are of the view that the entire issue has to be considered afresh by the respondents.

20. We, therefore, dispose of this OA with a direction to the respondents to keep in view the aforesaid observations and to re-consider the entire issue objectively in consultation with the State authorities and other concerned authorities and pass speaking orders in accordance with Rules within a period of six months from the date of receipt of a copy of this Order.

21. The stay granted on 20.11.2015 shall continue to be in force till the above exercise is completed. M.A.No.29/2017 stands disposed of accordingly.

22. No order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 3rd day of November, 2017

