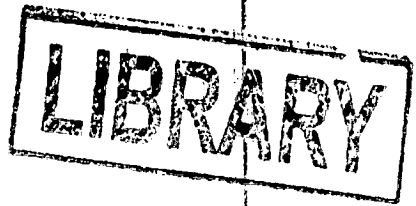


CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. OA 350/00973/2014

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

BIRENDRA NATH SHARMA

VS

UNION OF INDIA & ORS.

For the applicant : Mr.P.Kumar, counsel
For the respondents : Mr.C.R.Bag, counsel
Mr.U.P.Bhattacharya, counsel

Order on : 8.3.16.

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. This application has been filed seeking the following relief :

"the respondents be directed to release House Rent Allowance to the applicant for this period i.e. October 1997 to May 2002, January 2005 to May 2005 and June 2005 to January 2008 together with interest at the appropriate rate to which this Hon'ble Tribunal may seem fit and proper."

3. The brief question to be determined is whether the applicant would be entitled to draw HRA for the period he occupied Pool Accommodation provided by Coal India Ltd. while he served the present respondents at Ranchi.

4. Ld. Counsel for the applicant would strenuously urge that in view of the fact that the present employer i.e. CBI failed to provide quarters while he served them at Ranchi, the respondents would be bound to release HRA for the said period during which he had occupied the Pool Accommodation of Coal India Ltd. He would draw my attention to a communication dated 23.3.12 by the Dy. Director (Admn) CBI, New Delhi in reply to his email dated 22.1.12 regarding payment of HRA, non-crediting of un-availed jointing time in E.L. etc. The excerpts of the said letter would be useful to quote and is thus quoted hereunder :

"Non-payment of HRA

Shri B.N.Sharma has stated that he was not paid HRA as he was occupying quarter of Coal India Ltd., while the other similarly placed officers were given HRA., Shri B.N.Sharma has referred an order of Patna High Court in this regard.

It is stated that the order of Patna High Court in respect of quarters of PSUs in Ranchi and Dhanbad etc. Referred by Shri B.N.Sharma is not applicable in respect of quarters at Kolkata because there was no general pool or CBI Pool quarters in Ranchi and Dhanbad, as such, Central Govt., employees used to stay in quarters of PSUs after paying nominal admissible rents. ON the other hand, there was general pool quarter as well as CBI Pool quarters available in Kolkata. As regards, non admissibility of HRA while Govt. Officials are staying in quarter of PSUs, the DOPT has clarified that HRA is not a source of benefit of Govt. Employee that they can claim as a matter of right. HRA can be claimed as a matter of right if a Govt. Servant makes his own arrangement for accommodation. There is no ground/justification for re-imbursment of rent, if the rent paid for the accommodation does not exceed 10% of the basic pay. If no HRA is given and the rent paid in the guest house is more than 10% of his basic pay, he can claim reimbursement. In the case of Shri B.N. Sharma, the amount paid was below 10% of his basic pay.

It is also stated that since the order of Patna High Court, which are applicable in Dhanbad and Ranchi etc. Is not applicable in Kolkata, no action can be initiated either for recovery of HRA paid to officers posted in Dhanbad, Ranchi etc. Or payment of unpaid HRA to officials, who were occupying PSUs quarters at Kolkata. Thus, the reasons for not paying HRA to Shri Sharma for staying in Coal India Limited quarter is justifiable. The amount of Rs.14,712/- paid as HRA to Shri Sharma was recovered because of the objections raised by Central Audit, Principal Dte. Of Audit (Central), Kolkata."

Drawing my attention to the said letter the Id. Counsel would submit that the Hon'ble High Court at Patna in an identically circumstanced case, in Civil Writ Jurisdiction case No. 87/94, wherein the petitioner had claimed HRA as accommodation provided to him was not by the respondents but by the HEC, had held

"I do not find anything in the fundamental rules which would deprive the petitioners from claiming house rent allowance only because accommodation has been provided to them by the respondents. Quarter allotted to them cannot be treated to be Govt. Accommodation. This application stands disposed of with a direction to the respondents to consider the claim of the petitioner in the light of the decision of the Central Administrative Tribunal, referred to above, and fundamental rule 45 read with rules framed thereunder. There will be no order as to costs."

(emphasis supplied)

5. Per contra Id. Counsel for the respondents would vociferously submit that in terms of the communication dated 23.3.12, since an accommodation was provided for the applicant although not by the employer itself, no HRA would be admissible for the period he occupied such accommodation. Further

ld. Counsel would submit that Ministry of Finance, Dept. Of Expenditure had circulated on 17.10.2000 its clarificatory instructions on the question of reimbursement of rent paid by Govt. Employees who go on posting to the Centre and temporarily stay at State Bhawans or Guest Houses running by State Govt./Autonomous Body. The instructions clarified that, vide Ministry's OM dated 27.11.94 they were allowed to be reimbursed the amount of rent paid by them in such Guest Houses in excess of 10% of their basic pay or the HRA admissible to them, whichever was less. Prior to such order no HRA or reimbursement of rent charged by Guest Houses was admissible.

The matter was reviewed and the following stand was taken that

"taking into consideration the various grounds which representation of Shri Atanu Purakashtha is based. It is a known fact that allotment from general pool takes fairly long time. Accordingly, the officers should make their own arrangements by hiring private accommodation wherever the allotment of accommodation is likely to take time. It is not obligatory on the Central Government to provide Government accommodation to all Government officers in general or government officers posted in Centre on tenure basis in particular. As the Govt. is not in a position to provide accommodation to all officers/employees, this is why the orders regarding grant of HRA have been issued. Normally, it is expected that a Government accommodation with this amount may not be available in the market, the Government subsidise additional expenditure on rent up to the prescribed limits with reference to classification of cities. In A-I class cities like Delhi, the rate of this subsidy is the highest 30% of the pay of the officer. It is felt that it is possible for the officers to secure private accommodation on rent with an amount equal to 40% of his pay viz 10% from basic pay and 30% by way of HRA. In spite of this, if an officer prefers to continue to stay in State Bhavans/Guest Houses it can only be held that he stays in the Guest House of his own choice and not by way of any compulsion. Again, it is also not correct to say that the accommodation in the Guest House is not subsidised because the rent charged by the State Bhavans are far less as compared to the rent at which equivalent accommodation in that locality is available in the open market. It may be added that HRA is not a source of benefit for Government servants that they can claim as a matter of right. The HRA can be claimed as a matter of right only if a Government servant makes his own arrangements for accommodation.

Thus the request of Shri Atanu Purakashtha, Director (Police) cannot be agreed to as it is his own choice to stay in Guest House and it cannot be held that he is forced to stay in State Bhavan/Guest House etc. He can, however, claim reimbursement of rent or HRA if the rent paid is more than 10% of his basic pay in terms of this Ministry's OM dated 27.11.94 mentioned above. In short the decision contained in this Ministry's OM dated 27.11.94 is reiterated.

This has been seen and approved by JS (Per)."

It was submitted that, although the clarifications were in regard to one Atanu Purakashtha, the same would apply to the present applicant.

6. At this juncture Id. Counsel for the applicant would submit that the said circular could be applied to cases where the officials exercised their own choice to stay in Guest Houses and were not compelled to stay as such, whereas in the present case the applicant was compelled to stay at the quarters/Pool Accommodation provided by Coal India Ltd. since no accommodation could be provided by his employer. Therefore the clarifications would not apply to him and the applicant would be eminently eligible to get HRA for the period he occupied such quarters.

7. I have heard Id. Counsel for the parties and perused the materials on record.

8. I have given my anxious consideration to the arguments advanced from which the following could be discerned :

- (i) The applicant was compelled to stay at quarters/pool accommodation of Coal India Ltd. for the period he was serving at Ranchi since his employer failed to provide any rent free accommodation to him during his such posting and he paid rent to Coal India Ltd.;
- (ii) He was paid HRA for the said period as claimed by the applicant.
- (iii) After his retirement the authorities deducted an amount of Rs.14,712/- being the entire amount of HRA that accrued to the applicant during his stay at Ranchi where as, assuming that Ministry of Finance OM dated 27.10.94 was applicable, he would have been entitled to be reimbursed at least the rent he had already paid to the Coal India Ltd. for occupying its quarters while his posting at Ranchi.
- (iv) The decision of the Hon'ble High Court at Patna on an identical issue would squarely bind this Tribunal having attained finality being not reversed on appeal. Furthermore, the Hon'ble High Court had relied upon an order passed by Central Administrative Tribunal, Patna Bench in **OA 321/89 (Mahavir Singh -vs- UOI)** which order being issued by a co-lateral Bench would bind this Tribunal. As it has been held that quarters allotted to a Govt.

Employee by HEC would not be treated as Govt. Accommodation, the same analogy would apply here.

- (v) That apart, applying the clarification dated 17.10.2000 supra I would find no justification in disallowing the HRA to the present applicant for the period he was "compelled to" occupy accommodation provided by Coal India Ltd. since his own employer failed to provide him accommodation.

9. In view of the aforesaid revelations, the OA is allowed and the respondents are directed to refund the recovered HRA amount with interest @ 8% per annum, if already recovered, or to release HRA for the period October 1997 to May 2002, January 2005 to May 2005 and June 2005 to January 2008 as prayed for i.e. the period during which the applicant occupied pool quarters of Coal India Ltd., with interest @ 8% if same has already not been released, within two months from the date of communication of this order.

10. No order is passed as to costs.

Bv
(BIDISHA BANERJEE)
MEMBER (J)

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