

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. OA 350/00500/2016

Date of order : 20.6.2016

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

SOUBIR KR. BHATTACHARYA

VS

UNION OF INDIA & ORS. (S.E.RLY.)

For the applicant : Mr.B.Bhusan, counsel

For the respondents : Mr.B.L.Gangopadhyay, counsel

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 reliefs :

- a) Do issue mandate upon their men and agent and each of them to forthwith rescind, recall and/or withdraw the purported speaking order dated 27.11.15 and its corrigendum dated 30.11.15 passed by the respondent No.4 not to give any further effect to the same;
- b) Issue direction upon the respondents to make a payment of rest of HRA in tune of the 20% from 12.7.2010 to 9.1.2011 applicable during erstwhile place of posting including the interest @ 18% per annum till the realisation of total sum;
- c) Issue direction upon the respondents, their men and agent to make a payment of 22 days from 10.1.11 to 3.2.11 during the place of posting at NJP including the interest @ 18% per annum till the realisation of total sum;
- d) Issue direction upon the respondents, their men and agent to make the payment of unpaid HRA from March 2011 to October 2013 as per the applicable rate at the place of posting including the interest @ 18% per annum till the realisation of total sum;
- e) Issue direction upon the respondents, their men and agent to grant HRA with an immediate effect that has been stopped illegally from March 2016 inspite of acceptance of request for cancellation of quarter at the verge of superannuation;
- f) Issue direction upon the respondents, their men and agent to release the payment of 13 days which has been deducted erroneously from 17.6.15 to 29.6.15 for that LAP was sanctioned;
- g) Issue direction upon the respondents and each of them to forthwith certify and transmit all the papers and documents in connection with the instant application before this Hon'ble Tribunal for kind perusal an on such perusal do consonable justice to the applicant.

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3. The case of the applicant in a nutshell is that being aggrieved by an order dated 19.4.12 the applicant preferred OA 804/12 before this Tribunal which was disposed of with a direction as follows :

"Within thirty days from the date of receipt of a copy of this order shall give a personal hearing to the applicant and well before that applicant could file a detailed calculation and statement and during such personal hearing the authority shall explain to him the details and thereafter pass a speaking order within a period of one month and communicate the same to the applicant."

Pursuant to such direction the authorities passed the following order :

"Ref: Hon'ble CAT/Calcutta Bench's order in OA No. 804/2012 dt. 15.10.15.

In response to Hon'ble CAT/Calcutta Bench's order in OA under reference, you have attended the Chamber of AMM/Stores/MLDT on 24.11.15. Where following points have been explained in front of you :

1. Your absent period (sick under PMC) from 12.7.10 to 9.1.15 has already been regularized in due leave (86 days Commuted leave & 96 days LAP). Payment of that period has been paid Rs.1,16,982/- A deduction towards provident fund, Group Insurance and P/Tax (W.B.) has been deducted to Rs.8114/- & net amount paid Rs.1,08,868/-.
2. PLB (Bonus) for 2009-10 of Rs.8860/- and difference Bonus for 2010-11 for 07 months of Rs.4624/- has already paid to you.
3. Excess recovered Festival advance of Rs.300/- has been refunded to you through salary bill of May 2012.
4. On submission of application, House Rent Allowance has been paid from 1.8.13 as per extant rule & copy of circulars for grant of HRA supplied to you on 24.11.15.
5. 10 days preparatory leave which was admissible has already been credited to your leave account as LAP as you have not availed the same on transfer.

Accordingly you have expressed satisfaction in writing after the seating at the chamber of AMM/Stores/MLDT on 24.11.15. Moreover a copy of Sr.DFM/KIR's letter No. KIR/ENGA-XP/Corresp dt. 26.11.15 attached herewith showing payment details at your State Bank of India's account No. 11170360874. This is for your information.

*✓ (K.C. Singh)
AMM/Stores/MLDT."*

In the present OA the applicant is aggrieved as his HRA has been stopped, admittedly as para 4 of the impugned speaking order dated 27.11.15 extracted supra would indicate, from March 2011 to October 2011.

4. On 30.11.15 AMM Stores intimated the applicant as follows :

"Please read item number 4 of Speaking order of even number dt. 27.11.2015 as below :

4. On submission of application for House rent allowance along with application for allotment of Railway accommodation on 1.8.13, after observing due procedure & obtaining approval of competent authority, House Rent Allowance has been paid to you from 1.11.13.

Copy for procedure for grant of HRA has been supplied to you on 24.11.15."

5. The respondents were directed to ascertain why the HRA has not been paid to the applicant for the aforesaid period.

Upon instruction ld. Counsel for the respondents submitted during the course of hearing that as per Railway Rules no HRA is admissible in the following cases :

- "(a) When the Railway servant does not spend anything for his accommodation;
- (b) When the accommodation hired by the Railway servant is used for other than bona fide residential purpose;
- (c) When he is either occupying Government accommodation or refuses Government accommodation, or after acceptance surrenders the Government accommodation of the class to which he is entitled to;
In case he surrenders the Government accommodation in order to occupy his own house, he shall be entitled to the house rent allowance under normal rules.

Refusal by a Railway servant of a quarter of a different class from that for which he is eligible is not refusal for the purpose of these rules. But if the employee applied for such a quarter and is allotted the same, it will be considered to be a refusal."

The respondents submitted that since a quarter was allotted to him but he did not occupy the same the authorities found no HRA was admissible to the applicant and accordingly no HRA was paid to him.

6. Ld. Counsels were heard. Materials on record were perused.

7. The records demonstrated that pursuant to an application preferred on 1.8.13 seeking allotment of a Railway quarter, the Railway quarter No. 420/L, Type I at F.S. Colony which got vacated by one Krishna Chandra Mondal, Helper II Maldah was allotted to the present applicant. Since the applicant had only a few months to retire he prayed before the Sr. Mechanical Engineer (Diesel), Maldah Town on 22.2.16 stating that he was not in a position to occupy the quarters on the verge of his retirement and requested the authorities to arrange for re-allotment of the same. On 26.2.16 ADME/D/MLDT for Sr. DME/D/MLDT duly acknowledged that the applicant submitted unwillingness to occupy the quarter and therefore the office order dated 17.2.16 i.e. the "allotment letter be treated as cancelled".

The applicant is at present aggrieved as even after cancellation of the quarter HRA was not paid to him.

8. In view of the provisions of the Railway rules quoted supra HRA could be forfeited if the Railway servant refused Government accommodation or surrendered the said accommodation. In no case cancellation of the quarter itself would lead to forfeiture of HRA. Further Id. Counsel pleaded about grant of HRA for the period he was not allotted any quarter and the allotment made on 17.2.16 was cancelled to till his retirement, whereas in the relief prayed for he has asked for HRA for the period of 12.7.10 to 9.1.11 and again from March 2011 to October 2013 along with various other dues. Therefore in my considered opinion justice would be met if a direction is given up the authorities to give a personal hearing to the applicant and pass appropriate orders within two months from such hearing.

9. Accordingly it is ordered that the applicant shall present himself before the authorities for a personal hearing within four weeks from the date of receipt of a copy of this order, and shall place in writing his grievance in regard to payment of any nature fell due to him. Upon receipt of such representation and grant of personal hearing the authorities shall look into the grievance, consider the same in accordance with law and pass appropriate reasoned and speaking order within two months thereafter. In case nothing stands in the way, appropriate payments including unpaid HRA shall be accorded to the applicant within one month thereafter.

10. Accordingly the OA would stand disposed of. No order is passed as to costs.

(BIDISHA BANERJEE)
MEMBER (J)

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