

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

LIBRARY

No. OA 350/550/2016

Date of order: 17.05.2018.

Present: Hon'ble Ms Manjula Das, Judicial Member

ANOJ KUMAR CHOWDHARY

S/o Shri Munilal Chowdhary
Working in the post of Skilled being
Personnel No.102686, Section - Pistol,
Ticket No. 1034 in the Rifle Factory,
Ishapore, 24 Parganas (North)
R/o Arabindo Pally, Ward No. 13,
PO - Ichapur-Nawabganj,
PS - Noapara,
Dist. - 24 Parganas (North)
Pin - 743144.

...APPLICANT

VERSUS

1. Union of India, through
The Secretary,
Ministry of Defence
(Defence & Production)
Govt. of India,
South Block,
New Delhi - 110001.
2. The Director General cum Chairman
Ordnance Factory Board (OFB)
Govt. of India,
Ministry of Defence
Having his office at
'Ayudh Bhawan'
10A Shaheed Khudiram Bose Road,
Kolkata - 700001.
3. The General Manager,
Rifle Factory, Ishapore
PO - Nawabganj,
Dist. - 24 Parganas,
Pin - 743144.
4. Junior Works Manager/LB
Labour Bureau Section,
Rifle Factory, Ishapore,
PO - Nawabganj,
Dist. - 24 Parganas,
Pin - 743144.

...RESPONDENTS.

For the applicant : Mr.P.C.Das, counsel
Ms.T.Maity, counsel

For the respondents: Mr.B.B.Chatterjee, counsel

O R D E R

Per Ms. Manjula Das, Judicial Member

Being aggrieved with the recovery order dated 31.3.2016 for amounting to Rs.1,27,333/- from the salary, the applicant approached before this Tribunal by filing this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- a) To quash and/or set aside the impugned show cause notice dated 22.2.2016 issued by the respondent authority by which the respondent authority allegedly stated that why the amount of entire House Rent Allowance w.e.f. 2011 will not be recovered from the salary of the applicant being Annexure A/3 of this original application;
- b) To quash and/or set aside the impugned order of recovery dated 31.3.2016 issued by the Junior Works Manager/D.B. on behalf of the General Manager, Rifle Factory, Ishapore by which an amount of Rs.1,27,333/- will recover from the salary of the applicant within a period of seven days from the date of issue of the said letter by not considering the facts as stated by the applicant in his reply dated 27.2.2016 being Annexure A/5 of this original application;
- c) To pass an appropriate order directing upon the respondent authority to refund the money if any be deducted from the salary of the present applicant to the present applicant.
- d) To pass an appropriate order directing upon the respondent authority to make the payment of House Rent Allowance to the applicant month by month who is otherwise entitled as because he is living separately at the address at Arabindo Pally, PO - Ichapur - Nawabganj, PS - Noapara, Dist. - 24 Parganas (North) under Ward No. 13 of North Barrackpore Municipality and he is not living with his father.
- e) Costs.
- f) Any other appropriate relief or reliefs as Your Honour may deem fit and proper.

2. Heard Mr. P.C. Das, Id. Counsel assisted by Ms. T. Maity, Id. Counsel appeared on behalf of the applicant and Mr. B.B. Chatterjee, Id. Counsel appeared on behalf of the respondents.

3. Mr. Das submitted that the applicant is a semi-skilled employee in the Rifle Factory under the respondent No. 4 who has been residing at Arabindo Pally, PO - Ichapur - Nawabganj, PS - Noapara, Dist. - 24 Parganas (North). His father namely Munilal Chowdhury is also working in the Rifle Factory in the post of Junior Works Manager. The applicant was issued a show cause notice dated 22.2.2016 on the basis of audit objection stating that since the applicant is residing with his father therefore he is not entitled to House Rent

allowance and whatever HRA has been paid to him w.e.f. 2011 i.e. initial date of appointment shall be recovered from his salary. The applicant submitted his detailed reply to the show cause notice on 27.2.2016. However, the respondents without considering his case issued impugned order dated 31.3.2016 by which an amount of Rs.1,27,333/- shall be recovered from the salary within a period of 7 days from the date of issue of the order. It is submitted by the Id. Counsel for the applicant that the grounds for show cause and consequential recovery of Rs.1,27,333/- from the salary is that, the applicant is residing in the Govt. Quarter No. 128, OWL Estate allotted in the name of his father Munilal Chowdhary, JWM/REF as declared in his service record. He is claiming HRA since 2.4.2011 which is against the rule. Thereafter by the impugned order dated 31.3.2016, respondent No.4 issued the recovery order by intimating the request regarding the HRA payment has been regretted by the competent authority and accordingly Account Office/RFI has forwarded a recovery details vide their letter dated 21.3.2016.

It was submitted by the Id. Counsel for the applicant that in fact the applicant is not residing with his father but residing separately in a rented house from 2011 onwards. His father purchased the said property in the year 2014 and handed over the same to the applicant and in the said property there are four rooms and in these rooms the applicant and his brother have been residing. Therefore it is not a fact that the applicant is residing with his father. Mr. Das forcefully argued that as per the rules of House Rent Allowances, a Government servant living in a house owned by him, his wife, children, father or mother shall also be eligible for House Rent Allowances. In this particular case, the father of the applicant is not drawing any House Rent Allowance as because he is residing in a Government quarter. Since the applicant is living separately at a different address, in terms of the said Rules he is entitled for the House Rent Allowances and the applicant is getting House Rent Allowance as per the order of the competent authority.

4. Mr. Chatterjee, Id. Counsel appearing on behalf of the respondents however, submitted that after the appointment of the applicant he applied for

Government accommodation on 2.4.2011. He was issued "No accommodation certificate w.e.f. 2.4.2011." He was getting HRA from the date of issue of NAC certificate i.e. 2.4.2011. It is submitted by the ld. Counsel that his father Munilal Chowdhury, who is an employee of the Rifle Factory is also residing in a Government accommodation at quarter No. 128, OWL, PO Ishapore Nawabganj, 24 Parganas (N) since allotted to him on 24.4.2000. It is submitted that in the service record the applicant's address is endorsed as 128 OWL, New Building, PO Ishapore Nawabganj, 24 Parganas (N) and he has put his signature on the first page of service record on 26.3.2011. It was submitted that he has not declared anywhere in his service book that 128 OWL is the address for communication and he is residing elsewhere or vice versa. It was further submitted that as per record the applicant gave his declaration of Family Members on 21.4.2011 where he also mentioned his present residential address and hometown address as Qtr. No. 128, OWL, PO Ishapore Nawabganj, 24 Parganas (N). It is clear from the above that the applicant's address is same as the address of his father. In view of the audit observation a show cause notice was issued to the applicant as per principle of natural justice where the applicant made his reply. It was submitted by the applicant that for the first time he had been living in a rented house at Arvindapalli, Ichhapur Ward No. 16, PO Ishapore, Nawabganj, 24-Pgs (North) since his joining the service and the address written in the service book is the address for correspondence. The applicant has never mentioned at any point of time in any official documents since his joining that the address written in the service book is his address for correspondence. As per standard office procedure, an employee has to mention two addresses - one present address and the other is permanent address, if there are two addresses of the incumbent. All communications are made in his address as recorded in the service book. The employee can change the address but it is the duty of the employee to intimate his employer about the present address every time he changes. It was further submitted that the applicant spent 5 years of service during which he never informed that he resides in a rented house.

In order to ascertain the veracity of the claim, the applicant was asked to submit some relevant documents and in response, the applicant submitted the rent receipts for the period from 13.10.2013 to 9.2.2014 signed by one Smt. Rajkumari Pandey, declared by the applicant as his landowner. But the applicant could not produce any rent agreement. The applicant stated that he could not produce the electricity bill issued by CESC as there was no electricity connection in the house. A letter dated 24.1.2016 was issued to the landowner to confirm the genuineness of the rent receipt and also to forward the counterparts of the rent receipts in question. In response the land owner vide her letter dated Nil expressed her inability to forward counterpart of the rent receipts since she had sold the property in March 2014. It was submitted by the Id. Counsel that the signature of the letter dated Nil is not matching with that of the rent receipt produced by the applicant. It was further submitted by the Id. Counsel that after thorough verification the respondent authorities came to a finding that the applicant is not residing in a rented house or the house as stated to be resided by the applicant. As such the application deserves to be dismissed.

5. I have heard the Id. Counsel for the parties, perused the pleadings and materials placed before me.

6. The points to be decided are -

- i) As to whether the applicant is residing in a rented house or in his father's house or in the quarter allotted to his father being quarter No. 128 OWL, PO-Ishapore Nawabganj, 24 Parganas (N) allotted to him.
- ii) Whether the applicant is entitled for House Rent Allowance or be recovered the payment which was already made as per HRA for the period w.e.f. 2.4.2011.

7. Govt. of India vide Ministry of Finance (Dept. of Expenditure) OM No. F.2 (37) -E, II(B)/64 dated 27.11.1965 on the subject of "Grant of compensatory (city) allowance and House Rent Allowance provides as hereunder :



"5(c) A Government servant shall not be entitled to house rent allowance if :

- (i) He shares Government accommodation allotted rent free to another Government servant; or
- (ii) He/she resides in accommodation allotted to his wife/her husband or to his/her parents/son/daughter by the Central Government, an autonomous public undertakings or semi-Government organization such as a Municipality, Port Trust, etc....."

8. The applicant was initially appointed on 26.3.2011 to the post of Machinist (semi skilled) Grade in the Rifle Factory, Ishapore. After his appointment, the applicant applied for Government accommodation on 2.4.2011 and the department vide letter dated 6.5.2011 (Annexure R/1) issued "No accommodation certificate to the applicant as he has not been provided with entitled Government quarter. It is noted that the applicant while submitting his family declaration on 21.4.2011 has shown his present and home town address as 128, New Building, OWL, PO - Ishapore - Nawabganj, 24 Parganas (N). In course of audit of service book, the Sr. Internal Audit Officer (Eys) vide memo No. IAO/RFI/Audit-objection/Corrs/Vol-I dated 2.2.2016 has made an observation citing the provisions of Govt. of India that the grant of HRA to the applicant was irregular and same has to be recovered from the present applicant. As per the Govt. of India OM dated 27.11.1965 it was provided, that the employee is to furnish a declaration as per Annexure II of General rules and orders which is a proforma of claiming HRA for Government accommodation in the format prescribed. It is noted from the reply made by the respondents that the certificate which was to be furnished by all Central Government servants are not completed as much as the same was without any date, signature and designation of the applicant. Thereafter the show cause notice was issued to the applicant by the respondent No.4 stating that there is audit objection dated 2.2.2016 stating that the applicant is residing in the Government quarter No. 128 OWL, PO - Ishapore - Nawabganj, 24 Parganas (N) allotted in the name of his father Munilal Chowdhury as declared in his service book and his claiming HRA since 2.4.2011 is against the rule on HRA. The applicant did make reply in details on 27.2.2016 that he has forgotten to change the correspondence address in his service book and he has

been living in the rented house at Arvindapalli, Ichhapur Ward No. 13, PO - Ishapore - Nawabganj, 24 Parganas (N) since joining in the service. The said reply contained as hereunder :

"That sir, on account of unawareness of Govt. rule I have done mistake for not changing y correspondence address in my service record book."

He also wanted to produce the resident proof of his rented house for kind perusal of the authority. The applicant furnished the certificate which is annexed as Annexure A/1 dated 1.4.2011 issued by North Barrackpore Municipality stating that the applicant is a permanent resident of the house of Rajkumari Pandey, Arabindo Pally, PO Ichhapur-Nawabganj, Ward No. 13, PS - Noapara, Dist. - North 24 Parganas. Noticeably the said quarter No. 128 OWL PO - Ishapore - Nawabganj, 24 Parganas (N) was allotted to his father Munilal Chowdhury by the authority, who is also an employee of the same factory.

The department vide letter dated 3.4.2016 asked the applicant to furnish some documents as he claimed that he has been residing in the house of Rajkumari Pandey, viz: tenants agreement, house rent receipt, electricity bill, etc. in support of his rental address. In response the applicant vide letter dated 16.4.2016 submitted 5. (five) rent receipts dated 13.10.2013, 10.11.2013, 8.12.2013, 12.1.2014 and 9.2.2014 signed by one Rajkumari Pandey, declared by the applicant as his landowner. The respondent authorities issued a letter dated 21.4.2016 to the landowner to confirm the genuineness of the rent receipt and also to forward the counterparts of the rent receipts in question. In response, the landowner vide her letter dated NIL expressed her inability to forward counterpart of the rent receipts since she had sold the property on March 2014. The respondent authorities to ascertain the veracity of the claim of the applicants made an enquiry. The enquiry committee visited the house and reported that the house/hut in Eurobindapally claimed to have been residing by the applicant on rent is found to be in uninhabitable condition, it was locked without any water and electricity connection.

In para 9 of the rejoinder the applicant has stated as hereunder :

1/2

"The applicant denies and disputes such type of allegations in terms of Annexure R/12 of the said reply. They never visited that place when the applicant is residing and the statements made as Annexure R/12 is a concocted document without any evidence."

Annexure R/12 infact is submitted by the applicant for supporting his case as there was an enquiry held by the respondents to ascertain the veracity of the claims of the applicant. As per the Enquiry Committee's report it is found that the applicant's house is not in habitable condition. On several visits nobody was found in the house and all the times it was locked with no electricity and no water communication. The applicant in his pleadings para 5(i) stated as hereunder :

~~Administrative~~
"From 2011 onwards the applicant has been residing in the address mentioned in the cause title on rent basis and thereafter, his father purchased the said property in the year 2014 and handed over the same to the applicant and in the said property there are four rooms and in these rooms the applicant namely Sanoj Kumar Passi (Chowdhary) and his brother namely Anoj Kumar Chowdhary has been residing. Therefore it is not a case or it is not a fact that the applicant is residing with his father."

9. Although the applicant stated that he was residing in rent basis since joining however, no such rent receipt has been furnished by the applicant to substantiate his case. After thorough exploration of the pleadings, reply and other materials placed before me, I find there is a shadow of doubt somewhere in the case of the applicant who established his case by supportive documents which are not enough to remove the shadow of doubt on various points -

(i) Firstly in the service record the applicant has given the address either corresponding, permanent or home town as quarter No: 128, OWL, PO Ishapore Nawabganj, 24 Parganas (N) which is the quarter allotted to his father Munilal Chowdhury. The applicant even did not feel at any time to change his address if he was residing in a rented house.

(ii) Secondly, no rent receipt was submitted at the relevant point of time when he was claiming his HRA. But when he was asked for the same that too, to ascertain the veracity of his claim, he submitted some rent receipts.

(iii) Thirdly the rent receipts annexed to the reply of the respondent authorities i.e. Annexure R/11 collectively, five in numbers are dated

[Signature]

13.10.2013, 10.11.2013, 8.12.2013, 12.1.2014 and 9.2.2014. If the applicant was living in a rented house from April 2011, no rent receipts could be produced by him before the authority. Thus it is easily discernible that if such rent receipts were in hand of the applicant why those have not been supplied after asking for by the respondent authorities. Even no such averment has been made by the applicant either in his pleadings in the OA or in his rejoinder.

(iv) Fourthly the applicant denied the correctness of Annexure R/12 annexed to the reply of the respondents which was infact issued in favour of the applicant and reads as hereunder

"Sri Sandeep Kr. Passi & Shri Anoj Kr. Choudhary both here tenant of my premises situated at Arabindo Pally, Ward No. 13, PO - Ishapore Nawabganj, Dist. - 24 Pgs (North), Pin - 743144.

W.e.f. April 2011 and thereafter I sold the above property on March 2014 in the name of their father. For the period of April 2011 to before March 2014, I have issued the rent receipt against the amount of Rs.1500/- per month. I have issued the rent receipt month by month. The signature of myself in the receipt which were issued in their favour are genuine and it is my signature.

Since I have already sold the property on March 2014 in favour of their father. Therefore it is not possible for me to reissue the counterpart of the rent receipt. Since I have sold the property on as is there is basis. Only I can say the signature of all the rent receipts are my signature."

The moment I have perused Annexure R/12, the question came to my mind that if the said receipt for April 2011 to March 2014 have been issued amounting to Rs.1500/- per months by Rajkumari Pandey why the applicant has failed to produce the same.

The respondents have raised a very significant issue of not matching of the signature of Rajkumari Pandey, the land owner, which leads to the possibility of being a fake or forged document and at a glance with bare eyes one can see that the signature of the rent receipts and the signature of the letter of Rajkumari Pandey dated Nil are not the same. Each and every letter contained the signatures which are not similar to each other.

(v) Fifthly proforma for claiming HRA as per Annexure A/2 has not been completed by the applicant as there is no signature, designation

and date which is a vital paper to be signed by the applicant for claiming the HRA and the conditions are not fulfilled.

10. After considering the entire conspectus of the case I am of the view that the respondent authorities, more particularly the audit authority have rightly pointed out the irregularities in claiming HRA by the applicant. As such they arrived at the following decisions –

(i) The applicant is not residing in the rented house but is residing with his father in the quarter allotted to his father by the respondents.

(ii) Reply is negative as he is not entitled to HRA as per Govt. of India OM dated 27.11.1965 for grant of HRA which provides under 5(c)(i) & (ii) as mentioned in para No.7 above.

Thus the OA fails for being devoid of merit.

11. Accordingly the OA stands dismissed. No order as to costs.

(MANJULĀ DAS)
JUDICIAL MEMBER

