

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/245/2016

Date of Reserve: 15.03.2019

Date of Order:18.04.2019

CORAM:

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Mr.Hamid Ali Khan, aged about 52 years, S/o. Late Yakub Ali Khan, At-Sainso, PO-Gobabasta, Via-Phulnakhara, Dist-Cuttack-754 001 – at present S.P.M.Govindapur, Cuttack-754 003.

...Applicant

By the Advocate(s)-M/s.S.Mohanty
S.C.Mohanty
B.Biswal

-VERSUS-

Union of India represented through:

1. The Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, P.M.G. Square, Bhubaneswar, Dist-Khurda.
3. Senior Superintendent of Post Offices, Cuttack City Division, Cuttack-753 001.

...Respondents

By the Advocate-(s)-Mr.D.K.Mallick

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Sub Post Master of Govindpur SO under the Department of Posts. He had earlier approached this Tribunal in O.A.260/00704/2015 for direction to respondents to grant HRA with effect from February, 2011 to June, 2014 and further to direct refund the electricity consumption charges recovered from his monthly salary. This Tribunal vide order dated 9.11.2015 disposed of the said O.A. with the following direction.

"4.Since the representations submitted by the applicant are stated to be pending, without entering into the merit of the case, we dispose of this O.A. at the stage of admission by directing Respondent No.3 to consider the representations dated 30.07.2014 (Annexure-A/6) followed by reminder dated

21.12.2014(Annexure-A/9) if the same are still pending, as per the extant rules and regulation and communicate the result thereof to the applicant by way of a reasoned and speaking order within a period of two months from the date of receipt of copy of this order. We hope and trust, if after such consideration it is found that the applicant is entitled to the relief claimed by him then expeditious steps be taken to extend the benefit to him preferably within a further period of three months from such consideration. Though we have not expressed any opinion on the merit of the case, we make it clear that all the points raised in the representations will be kept open for the Respondents to consider the same as per rules, regulations and law in force. However, it is made clear that if in the meantime the said representations have already been disposed of then the result of the same be communicated to the applicant within a period of two weeks".

2. In the above backdrop, Respondent No.3, i.e., Senior Superintendent of Post Offices, Cuttack City Division passed a speaking order dated 25.01.2016 (A/11) rejecting the claim of the applicant, inter alia, on the grounds as under:

"Sri Hamid Ali Khan now SPM Govindpur SO has worked as SPM, Fulnakhara so FROM 24.6.2010 TO 14.07.14. At that time there was provision of Post attached quarters for the residence of SPM at Fulnakhara SO. As per provisions of rules in force the incumbent of post attached quarters is not entitled to get HRA. Sri Khan in his representations dated 30.7.2014 followed by reminder dated 21.12.2014 has stated that the Post quarter was not suitable and habitable to occupy. The plea taken by Sri Khan is not correct as the predecessor of Sri Khan was occupying the same Post quarter. There may be some deficiency which could have mitigated if Sri Khan would have specifically brought to the notice of this office or notice of house owner. Instead of pointing out the specific problem of the said quarter, Sri Khan has mentioned that the house is totally not habitable which is not correct. However, in terms of Directorate letter no.18-9/2010-Bld. Dtd. 10.5.12 and letter no.7-6-99-Bldg dtd. 11.7.2000 it is mandatory for the employee to occupy the attached accommodation wherever available In such cases no HRA can be drawn in favour of the employee if he refuses to occupy the rent free quarter.

In view of the departmental rules, regulations and discussions made above the request of Sri Hamid Ali Khan ex-SPM, Fulnakhara (now SPM Govindpur) for grant of HRA in his favour as SPM Fulnakhara from 24.6.2010 to 14.07.14 made vide his representations dated 30.7.14 and 21.12.14 cannot be acceded to".

3. Hence, the applicant has approached this Tribunal in this O.A. praying for the following reliefs:

“...to admit the case and issue notice to the respondents to file their show cause as to why the case of the applicant shall not be allowed and after hearing the parties, the case of the applicant be allowed and pass necessary order to set aside Annexure-11 dtd. 25.01.2016 and direct the respondents to grant HRA w.e.f. February 2011 to June, 2014 along with 12% interest and further direct to refund the electricity consumption charges recovered from the monthly salary of the applicant within a stipulated period”.

4. It is the case of the applicant that Fulnakhara SO has been functioning in a building having three rooms (11' x 10') with one kitchen, the total area approximately being 650 sq.ft. Only one room has been provided for SPM's quarters which is about 10 x 10 ft. According to applicant, the living area for the SPM quarters is not in accordance with the provisions of Rule-559 of P & T Manual, Vol.II. Therefore, he was staying in a rented house and this fact he had intimated to the Postmaster, Cuttack-II for drawal of house rent at the appropriate rate. Further, he had also requested for shifting of the Post Office to another place as it was inadequate both for the Post Office and residential accommodation of SPM. He had also submitted a representation dated 09.07.2010 describing all those things to the Senior Superintendent of Post Offices, Cuttack City Division (Res.No.3). According to applicant, in the year, 2011, Inspector of Posts, Cuttack West Sub Division conducted an inspection and in his inspection report dated 23.11.2011(A/2) he had mentioned that though there is facility of Post Quarters, but the SPM is residing outside since the accommodation is not suitable. On 20.04.2012, the applicant sent a letter to the Senior Superintendent of Post Offices, Cuttack City Division requesting him for sanction of HRA in lieu of rent free accommodation as he was not staying in the post quarters with a further request not to recover Rs.222/- per

month from his salary towards electricity charges. It is submitted that in the year, 2012, Inspector of Posts, Cuttack North Sub-division conducted an inspection and in his report dated 22.22.2012(A/4) (Paragraph-8), he mentioned that "the office functions in a rented building with post quarters of rent Rs.2000/- but the SPM quarter is not in a habitable condition. In this regard, the SPM has already submitted his representation to the D.O. who may do the needful". Again in the year 2013, the Inspector of Posts while submitting his annual inspection report dated 27.11.2013 (A/5) mentioned in paragraph-4 thereof that "Office is functioning in the House of Mrs.Basanti Manjari Mohanty with attached Qtr. for the SPM. The present SPM is not residing in the affected Qtrs. due to unsuitability".

5. According to applicant since he was not staying in the post quarters, it was the duty of the respondent-authorities to allow HRA in his favour to which he was entitled to in lieu of availing the facility of post quarters.

6. Per contra, respondents have filed a detailed counter. In the counter, they have submitted that the applicant joined as S.P.M. on 24.06.2010. He had not intimated anything about the bad condition of the quarters while occupying the quarters on his joining as Sub Postmaster, Fulnakhara SO. Moreover, the representation dated 09.07.2010 a/1) stated to have been submitted by him is not available on records. According to respondents, as per the provisions of Rule-37 of Postal manual, Vol.VI, Part-I, "free quarters are allowed to Postmasters and such other establishment as it may be necessary for the proper discharge of the work of a Post Office to have residence on the premises. Where such free quarters are provided, the Postmaster is required to sleep on the office premises". Further, as per the provisions of Rule-4 of HRA & CCA, those occupying or refusing Government

accommodations are not eligible for house rent allowance. Respondents have submitted that when there is provision of attached post quarters, immediately on change of incumbency, the successor becomes the allottee and no H.R.A. is admissible if the allotted quarter is not taken into possession within the stipulated period as per Rule-317-B 12(1). Further, as per Directorate letter No.18-9/2010-Bldg. dated 10.05.2012, the quarters which are within the premises/building of the Post Offices need only be declared as Post attached quarters, which the PMs/SPMs, are bound to occupy. Respondents have pointed out that the applicant vide his representation dated 20.4.2012 intimated that he had not occupied the post quarters as it is un-habitable and requested for drawal of HRA and to stop recovery of the electricity charges. Since there is provision of attached quarters at Fulnakhara SO, the applicant was not entitled to any house rent allowance and he was supposed to reside in the said quarters by paying the electricity and other allied charges for the said quarters. Respondents have pointed out that in the inspection report submitted by the Inspector of Posts, it has been specifically mentioned that there is facility of post quarters, but the SPM is staying outside since the accommodation is not suitable as told by him. This was mentioned in the inspection report as per the version of the applicant. Respondents have pointed out that in view of the rulings on the subject as mentioned above, the applicant was not entitled for any HRA and therefore, no HRA has been granted to him. However, in consideration of the representation of the applicant, the Postmaster, Chandinichowk was instructed vide letter No.D2-13 dated 30.06.2014 not to recover the electricity charges for the quarter portion of Fulnakhara SO. Respondents have stated that there was certain minor problem in the quarter portion of Fulnakhara S.O. Moreover, since more space

was also required for the Post Office purpose, the matter was taken up with the land lord, but the same could not be materialized. Notification was also made for shifting of the Post Office. But that could not also be materialized due to want of any other safe and suitable building in the nearby locality. Therefore, the matter was taken up with the appropriate authority for de-quarterization of Fulnakhara SO and to use the quarters portion for official use. After receipt of approval of the competent authority, i.e., Chief PMG, Odisha Circle vide memo dated 11.11.2014, orders of de-quarterzition was issued vide memo dated 14.11.2014 (A/8 of the OA).

7. With the above submissions respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

Heard the learned counsels for both the sides and perused the records.

8. During the course of hearing, learned counsel for the applicant brought to the notice of the Tribunal an order dated 11.09.2015 in O.A.No.516 of 2014 and submitted that the facts of the present O.A. being identical to the facts of O.A.No.516 of 2014, similar order be passed.

9. I have considered the rival submissions threadbare. In Paragraph-4.1 of the O.A., the applicant has pleaded that the post quarters meant for SPM is about 10' x 10' and thus, completely inadequate within the meaning of provision of Rule-599 of P&T Manual, Vol.II. The respondents have not rebutted this contention of the applicant in their counter. Even assuming that the Inspector of Posts vide his report dated 23.11.2011 indicated that the SPM is staying outside since the accommodation is not suitable as told by him, but the fact remains that although the applicant had preferred representation after representation, the respondents sat tight over the matter. Similarly, in the inspection report submitted on 22.11.2012, even though it was

categorically pointed out that the office functions in a rented building with post quarter of rent Rs.2000.00, but the SMP quarter is not in a habitable condition and in this regard, the SPM has already submitted his representation to the DO, who may do the needful, there was no action. While the matter stood thus, the respondents vide their letter dated 30.06.2014 instructed the Postmaster, Chandinichowk not to recover the electricity charges from the applicant in respect of quarter portion of Fulnakahra SO. Further, it is a fact on record that there being certain minor problems in the quarter portion of Fulnakhara SO since more space was required for the Post Office purpose, the matter was taken up with the land lord, but it could not be materialized. Resultantly, a notification was issued for shifting of the Post Office, and the same also could not be materialized due to want of any other safe and suitable building in the nearby locality. Thereafter, the matter on being taken up with the CPMG, Odisha Circle, vide memo dated 11.11.2014 he issued order for dequarterization in consequence of which vide memo dated 14.11.2014 dequarterization of the post quarters was declared.

10. Thus, from the above, it is quite clear that sooner or later, the respondents admitted that the postquarters was not in a habitable condition and/or not in conformity with the provisions of Rule-599 of P&T Manual, Vo.II. Since, the post quarters admittedly, was not in a habitable condition, it was not proper on the part of the respondents to force the applicant to reside therein under the garb of relevant rules on the subject, as stated by them in their counter.

11. This Tribunal has also gone through the facts of O.A.No.516 of 2014 as cited by the applicant in support of the reliefs sought for. In that case, the applicant despite his representation to consider the matter, as the quarters

was not in a habitable condition and on the other hand, challenging the refusal of the respondents to pay HRA as he was staying outside, had approached this Tribunal. This Tribunal relying on an earlier decision in O.A.No.463 of 2008 (Paramananda Nanda vs. UOI) held that the applicant therein was entitled to HRA for the period from 17th August, 2009 to 22nd August, 2012 and accordingly, directed to calculate and pay HRA for the said period to the applicant. Having taken into consideration, this Tribunal finds that the facts of the present O.A. are quite identical to the facts in O.A.No.526 of 2014 and therefore, to maintain consistency and uniformity in the administration of justice, I am not inclined to make a departure from the view already taken by this Tribunal under similar facts and circumstances. In view of this, the impugned order dated 25.01.2016 (A/11) is quashed and set aside. Consequently, the respondents are directed to grant HRA in favour of the applicant from February, 2011 to June, 2014. As regards the electricity charges, since the respondents by virtue of letter dated 30.06.2014 had already directed the Postmaster, Chandinichowk not to recover the electricity dues from the salary of the applicant, it is for the respondents to examine and work out as to from which date the electricity charges have not been deducted and accordingly, refund the electricity dues already recovered from the salary of the applicant. This exercise shall be carried out within a period of 120 days from the date of receipt of this order.

12. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

