

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00424/2017

Jabalpur, this Friday, the 04th day of January, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Om Prakash Gaur
S/o Late Sh. J.P. Gaur
Date of Birth 09.11.1953
Retd. Post Master Guna HO
Annapoorna Colony,
Guna-473001 (M.P.)

-Applicant

(Applicant present in person)

V e r s u s

1. Union of India, Through its Secretary
Ministry of Communication
Department of Post
Dak Bhawan, Sansad Marg
New Delhi 110001

2. Chief Post Master General Madhya
Pradesh Parimandal Dak Bhawan
Hoshangabad Road,
Bhopal 462012 M.P.

3. Post Master General
Indore Region
Indore 452001 M.P.

4. Superintendent of Post Office
Guna Division, Guna 473001

- Respondents

(By Advocate –**Shri P.K. Chourasia**)
(Date of reserving the order: 13.08.2018)

ORDER**By Ramesh Singh Thakur, JM:-**

This Original Application has been filed against the order dated 17.08.2015 (Annexure A/6) and dated 26.12.2016 (Annexure A/15) passed by the respondent No.3 and respondent No.2.

2. The applicant in this Original Application has prayed for the following reliefs:-

“8(i) Summon the entire relevant record including the concerned Building file;

8(ii) Set aside the orders dated 17-08-2015 Ann. A6 and dated 26-12-2016 Ann. A15 passed by Resp. No.3 and Resp.No.2 to the extent it relates against the applicant further command the respondents to declare the Guna HQ Building as non residential w.e.f.01-08-2007 on the grounds stated above in Para 5.

8(iii) To order for payment of Compensation in lieu of Rent Free accommodation for the period we.f.01-08-2007 to the date of retirement 30-11-2013 of the applicant i.e. for the period of incumbency of the applicant on the post of Post Master Guna HO.

8(v) Award the cost of the litigation to the applicant.

8(vi) Award the payment of interest @12% p.a. from the date of application till the date of payment.”

3. Precisely the case of the applicant is that he has joined the respondents service on 23.05.1973 on the post of Postal Assistant. After rendering service of nearly 30 years, the

applicant gave his joining at Guna Head Office on 31.07.2007 (Annexure A/1) as Post Master Guna HO and stood retired from the said post on 30.11.2013 on superannuation.

3.1 When the applicant was working as Post Master Guna, the entire residence of Post Master Guna HO located in 1st Floor of Guna HPO building, which was taken over for the construction of newly office of Respondent No.4 early in 2006 and therefore due to non availability of residence for the applicant, House Rent Allowance was continuously being drawn and was paid to the applicant and also for his predecessor except that payment of compensation in lieu of Rent Free Quarter. Entire new construction on the 1st Floor above the Guna HPO Building has been in the use and for the office of respondent No.4.

3.2 The Director Postal Services, Indore, during the annual inspection of office of respondent No.4 in December 2007, which was carried on 07.12.2007 (Annexure A/2) has written in IR Para 23.2 that the construction work for 1st Floor of Guna HO building had left mid way by contractor and only electric fitting and other item of work yet to be

completed. Due to non availability of residential accommodation in Guna HO, the applicant resided by making his own arrangement in Guna town and he was only paid HRA and was not paid compensation in lieu of rent free quarter for want of declaring Guna HO as non residential by competent authority. During his service period, the applicant represented higher authorities to settle his grievance of non payment of compensation in lieu of rent free accommodation, since rent free accommodation was not provided to him as Post Master Guna HO. But no response was received from the respondent-department. After retirement, the applicant vide his application dated 21.07.2014 (Annexure A/3) addressed to respondent No.4 and requested to settle his grievances for payment. Due to inaction of the respondents the applicant further represented to respondent No.4 vide representation dated 13.05.2015 (Annexure A/5). The respondents have issued order dated 17.08.2015 (Annexure A/6) declaring Guna HO as non residential only w.e.f. 01.01.2009, the date of shifting of office of respondent No.4 followed by the orders of respondent No.4 dated 24.08.2015 (Annexure A/7).

3.3 The respondent No.3 PMG Indore wrote a letter dated 24.02.2015 (Annexure A/8) to the respondent No.2 stating/clarifying the facts of the case and issues of the applicant recommended the date of declaration of Guna HO as non residential be w.e.f.01.08.2007. Now the respondent No.3 has passed the impugned order dated 17.08.2015 with the approval of respondent No.2 ignoring the proposal based on sound footings and facts of case and situation narrated by respondent No.4 vide letter dated 10.09.2008 (Annexure A/9). The applicant after knowing the facts that authorities have issued this defective and imaginary orders, represented to the CPMG Bhopal i.e. Respondent No.2 on 26.08.2015 (Annexure A/11) and requested to declare Guna HO building w.e.f. 01.08.2007 as proposed by the respondent No.4. The applicant being aggrieved with the inaction of the respondents, filed Original Application No.200/605/2016 before this Tribunal which was disposed of vide order dated 27.09.2016 (Annexure A/14) with a direction to the respondents to decide the claim of the applicant as mentioned in the letters of the applicant within a period of three months from the date of receipt of a copy of this order. Thereafter the applicant received the orders of the

Respondent No.2 dated 26.12.2016, respondents No.3 dated 14.12.2016 and that of respondent No.4 dated 27.12.2016 (Annexure A/15, 16 and 17) in which the applicant was denied the compensation in lieu of rent free accommodation citing that the applicant has not produced any evidence as to whether there was no Post Master residence w.e.f.01.08.2007 and thus rejected the claim of the applicant.

4. The respondents have filed their reply. It has been submitted by the replying respondents that the applicant was posted as Postmaster Guna HO for the period from 31.07.2007 to 30.11.2013. While working on the said post the applicant stood retired from service on 30.11.2013 on attaining the age of superannuation. It has been submitted by the replying respondents that the applicant at Guna HO was without residence with effect from 01.08.2007 and as per rules he is entitled for compensation in lieu of rent free accommodation for the period from 01.08.2007 to 30.11.2013, but the compensation has not been paid to him, is not supported by rules.

4.1 It has been specifically submitted by the respondents that the applicant is seeking compensation in lieu of rent free

accommodation for the period from 01.08.2007 to 30.11.2013, by filing original application in the year 2017. So, the relief claimed by the applicant is barred by limitation. It has been submitted by the replying respondents that the applicant has no case. Being Head of the Office the applicant has drawn and taken HRA for the period from 01.08.2007 to 30.11.2013. He was not entitled for HRA for the period from 01.08.2007 to 31.08.2009. Hence excess drawn of HRA by himself being the Head of Office was ordered to be recovered. It has been submitted that unless a particular office with residence provision, declared by the competent authority as without residence, HRA cannot be granted. After the retirement of the applicant, he started making representation for declaration of Guna HO as without residence with effect from 01.08.2007 and started claiming compensation in lieu of rent free accommodation. After following due procedure of rules, Guna HO has been declared without residence vide order dated 17.08.2015 on merger of postmaster attached quarter with office accommodation with effect from the date of shifting of Divisional office in HO Building i.e. 01.01.2009. As per rules on declaration of Guna HO without residence w.e.f.

01.01.2009, the applicant was entitled for HRA for the period from 01.01.2009 to 30.11.2013, but he had already drawn and taken HRA prior to this period for which he was not entitled because he was in possession of accommodation and taken amount of Rs.15867/- excess payment as house rent allowance which is recoverable from him.

5. The applicant has filed rejoinder to the reply filed by the respondents and has reiterated his stand as taken by him in the Original Application.

6. We have heard the learned counsel for both the parties and perused the pleadings and documents annexed therewith.

7. From the pleadings it is admitted fact that the applicant has joined the respondent-department on 23.05.1973 on the post of Postal Assistant. After rendering service of nearly 30 years, the applicant gave his joining at Guna Head Office on 31.07.2007 (Annexure A/1) as Post Master Guna HO. It is also admitted fact that the applicant stood retired from the post of Post Master Guna HO on 30.11.2013 on superannuation. The case of the applicant is that while working as a Post Master Ghuna, the entire

residence of Post Master Guna HO was located in 1st Floor of Guna HPO Building, which was taken over for the construction of newly office of Respondent No.4 early in 2006. So, therefore due to non availability of residence for the applicant, House Rent Allowance was continuously being drawn by the applicant. The applicant and his predecessor were given House Rent Allowance but the applicant was not made the payment of compensation in lieu of Rent Free Quarter due to the fact that the entire new construction on the 1st Floor above the Guna HPO Building has been in the use and for the office of respondent No.4.

8. It is also clear from the pleadings that as per Annexure A/2 the Director Postal Services, Indore, during the annual inspection of office of respondent No.4, which was carried on 07.12.2007 (Annexure A/2) has written in IR Para 23.2 that the construction work for 1st Floor of Guna HO building had left mid way by contractor and only electric fittings and other items of work yet to be completed.

9. From the pleadings it is also clear that the applicant represented higher authorities to settle his grievance of non payment of compensation in lieu of rent free

accommodation, since rent free accommodation was not provided to him as Post Master Guna HO. After retirement, the applicant vide his application dated 21.07.2014 (Annexure A/3) addressed to respondent No.4 had requested to settle his grievances for payment. It is also clear from the pleadings that due to inaction of the respondents, the applicant further represented to respondent No.4 vide representation dated 13.05.2015 (Annexure A/5). The respondents has issued order dated 17.08.2015 (Annexure A/6) declaring Guna HO as non residential only w.e.f. 01.01.2009, the date of shifting of office of respondent No.4 followed by the orders of respondent No.4 dated 24.08.2015 (Annexure A/7).

10. It is also clear from the Annexure A/8 that the respondent No.3 PMG Indore has also wrote a letter dated 24.02.2015 to the respondent No.2 stating/clarifying the facts of the case and issues of the applicant recommended the date of declaration of Guna HO as non residential w.e.f.01.08.2007. But the respondent No.3 has passed the impugned order dated 17.08.2015 with the approval of respondent No.2 ignoring the proposal based on sound

footings and facts of case and situation narrated by respondent No.4 vide letter dated 10.09.2008 (Annexure A/9).

11. The main case of the applicant is that after knowing the facts that authorities have issued this defective and imaginary orders, represented to the CPMG Bhopal i.e. Respondent No.2 on 26.08.2015 (Annexure A/11) and requested to declare Guna HO building w.e.f. 01.08.2007 as proposed by the respondent No.4. From the pleadings it is also clear that the applicant had filed Original Application No.200/605/2016 before this Tribunal which was disposed of vide order dated 27.09.2016 (Annexure A/14) with a direction to the respondents to decide the claim of the applicant as mentioned in the letters of the applicant within a period of three months from the date of receipt of a copy of this order. Thereafter the applicant received the orders of the Respondent No.2 dated 26.12.2016, respondents No.3 dated 14.12.2016 and that of respondent No.4 dated 27.12.2016 (Annexure A/15, 16 and 17 respectively) whereby the applicant was denied the compensation in lieu of rent free accommodation citing that the applicant has not produced

any evidence as to whether there was no Post Master residence w.e.f.01.08.2007 and has ultimately rejected the claim of the applicant.

12. The main reasons given by the replying respondents are that the applicant was posted as Postmaster Guna HO for the period from 31.07.2007 to 30.11.2013 and while working on the said post he stood retired from service on 30.11.2013 on attaining the age of superannuation. It has been submitted by the replying respondents that the applicant at Guna HO was not declared without residence with effect from 01.08.2007 and as per rules he is entitled for compensation in lieu of rent free accommodation for the period from 01.08.2007 to 30.11.2013, but the compensation has not been paid to him, is not supported by rules. The main reply of the respondents is that unless a particular office with residence provision, declared by the competent authority as non residential which was done w.e.f.01.01.2009. So, the applicant is not entitled for compensation in lieu of rent free accommodation.

13. It is very clear from Annexure A/2 when the Director Postal Services, Indore, has made/written in IR Para 23.2 regarding the status of the construction work for 1st Floor of

Guna HO building mentioning that the contractor had left the construction mid way and only electric fittings and other items of work yet to be completed. This letter itself proves the fact that as on 07.12.2007 when the Director Postal Services, Indore has inspected the premises the construction work of the 1st floor of the GPO HO building was incomplete as the contractor had left the work mid way. This itself proves that building which was to be allotted to the applicant was under construction and the applicant was not in occupation. Secondly, it is also clear from the Annexure A/8 whereby the respondent No.3 PMG Indore wrote a letter dated 24.02.2015 to the respondent No.2 stating/clarifying the facts of the case and issues of the applicant recommending the date of declaration of Guna HO as non residential w.e.f.01.08.2007. Although, the respondent-department has declared the 1st floor of the Guna HO building as non residential w.e.f.01.01.2009 vide order dated 17.08.2015 (Annexure A/6). But from the Annexure A/2 and Annexure A/8 it is clear that the 1st floor of Guna HO building was under construction. Moreover, the respondent No.3 PMG Indore has also wrote a letter dated 24.02.2015 to the respondent No.2 for declaring the Guna HO

as non residential w.e.f.01.08.2007. So, the submission made by the applicant is based on the facts and evidence as per Annexure A/2 and A/8. So, it is clear that respondent-department has failed to declare the 1st floor of Guna HO building to be non residential w.e.f. 01.08.2007 but due to extraneous circumstances the respondent-authority has declared the 1st floor of Guna HO building as non residential w.e.f.01.01.2009, which is totally contrary to the facts and the evidence on record. It is also clear from the pleadings that despite the repeated representations from the applicant the respondent-department has not paid any heed to the request of the applicant. We are of the view that Annexure A/6, A/15, A/16 and A/17 are not based on facts. Moreover, despite the recommendation from PMG Indore as per Annexure A/8, the respondent-department has issued the impugned order dated 17.08.2015 (Annexure A/6) without applying their mind regarding the factual position of the construction work which was carried out on the 1st floor of Guna HO building, which is also clear from Annexure A/2 on the IR Para 23.2 mentioned by the Director Postal Services.

14. Resultantly, this Original Application is allowed. The order dated 17.08.2015, 26.12.2016, 14.12.2016 and 27.12.2016 (Annexure A/6, A/15, A/16 and A/17 respectively) passed by the respondents are illegal and are quashed and set aside. Respondents are directed to pay the compensation in lieu of rent free accommodation for the period w.e.f.01.08.2007 to the date of retirement 30.11.2013 to the applicant i.e. for the period of incumbency of the applicant on the post of Post Master Guna HO. The said exercise shall be done within a period of six weeks from the date of receipt of a copy of this order. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member