
(2016) 02 DEL CK 0180
In the Delhi High Court
Case No : W.P. (C) 4679 and 6202/2015

Ashes Kiran Prasad

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, Section 20, Section 21
Constitution of India, 1950 — Article 14

Citation : (2016) 02 DEL CK 0180

Hon'ble Judges : Sanjiv Khanna and Najmi Waziri, JJ.

Bench : Division Bench

Advocate : Ravi Sikri, Senior Advocate and Ayushi Kiran, Advocate, for the Appellant; V.S.R. Krishna, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Sanjiv Khanna, J.—1. These two writ petitions by Ashes Kiran Prasad and the Union of India (through Secretary Railway Board); Member Staff-Railway Board, General Manager, North Frontier Railway and General Manager, North Western Railway, impugn a common order dated 13th November, 2014, passed by the Principal Bench, Central Administrative Tribunal, Delhi (Tribunal, for short) and, hence, are being disposed of by this common judgment.

2. The impugned order passed in OA No. 4241/2013, filed by Ashes Kiran Prasad (hereinafter referred to as "employee") directs that for the period 30th October, 2003 to 26th October, 2007, when the employee was posted on promotion at North-West Frontier Railway, Gauhati, in the Senior Administrative Grade, he would be entitled to payment of House Rent Allowance (HRA) at the rates applicable at Patna on the basic pay paid to the employee in the Senior Administrative Grade. The Union of India was accordingly directed to calculate the difference in the HRA payable, and pay the same within three months from the date of the order. The Union of India is aggrieved by the aforesaid order. The employee, on the other hand, is aggrieved by the finding of the Tribunal that he

would not be entitled to payment of HRA on his transfer to Jaipur, in the North-Western Railways (NW Railways) with effect from 27th October, 2007 as he was in occupation of government accommodation.

3. The employee is an officer of the Indian Railway Traffic Service and was posted at Patna in the East-Central Railway (EC Railways) before being transferred to Gauhati in the North-East Frontier Railway (NF Railway) on promotion to the Senior Administrative Grade. The employee joined the posting at Gauhati and remained posted there from 30th October, 2003 to 26th October, 2007, when he was transferred to North-Western Railway, at Jaipur.

4. The employee claims that while at Hajipur, Bihar, he was drawing HRA of Rs. 2015/- calculated at the rate of 15% of his basic pay in the scale of Junior Administrative Grade. The claim, which has been accepted by the Tribunal, was that on being promoted and posted at Gauhati in the Senior Administrative Grade, HRA should be based and computed on enhanced basic pay in the promotional post.

5. Consequent to promotion of the employee to Senior Administrative Grade and posting at Gauhati, the employee was given government accommodation at Gauhati. However, the employee continued to get payment of HRA at Hajipur, Bihar in terms of the policy applicable to officers posted to the NF Railway that they would be allowed to retain the allotted quarter at the previous place of posting or the employee would be entitled to draw additional or second HRA at the same rate as paid prior to the officer being posted in the NF Railway.

6. The submission and reasoning, which has been accepted by the Tribunal, is that HRA is paid on a specified percentage of basic pay and this amount would increase every year on account of annual increments or on further promotion and, therefore, HRA would not remain static or fixed. HRA would increase with increments or when the basic pay is increased. It is pointed out that in case the employee had been promoted and was granted Senior Administrative Grade at Patna and was thereafter transferred to Gauhati in NF Railway, he would have drawn a higher HRA. The policy, relied upon by the Union of India, was iniquitous and falls foul of Article 14. Prior to the posting at Gauhati, when the employee was posted at Hajipur in the East-Central Railway, a controversy had arisen as to whether the employee should be paid HRA at Patna rate, where he was residing, or as applicable and payable at Hajipur, Bihar. The Patna rate was higher than the HRA payable at Hajipur. The employee's claim to HRA payable at Patna rate was accepted by the Central Administrative Tribunal, Patna and the Patna High Court. The Supreme Court had dismissed the Special Leave Petition.

7. In order to decide the controversy, we would like to first reproduce paragraph 1703 of the Indian Railway Establishment Code, which reads as under:-

"1703 The rates of House Rent Allowance which may be granted with effect from 1.8.1997 to Railway servants stationed in A-1, A, B-1, B-2, C class and unclassified cities are given below:-

Classification of cities/towns Rates of House Rent Allowance

House Rent Allowance at the above rates shall be admissible to all Railway servants (other than those provided with Government owned/hired accommodation) without reference to the quantum of rent paid, without requiring them to produce any rent receipts. Such railway servants shall, however, be required to furnish a certificate that they are incurring some expenditure on rent/contributing toward rent. House Rent Allowance at the above rates shall also be admissible to Railway servants living in their own houses subject to their furnishing a certificate that they are paying/contributing towards house or property tax or maintenance of the house.

NOTE: Where House Rent Allowance has been allowed under special orders, the same shall be given as admissible in A-1, A, B-1, and B-2 cities, as the case may be, until issue of orders to the contrary.

(Authority: Railway Board's let No. E(P&A) II-97/HRA-19 dated 3.10.2005)."

It is pertinent to mention that Patna is an "A" class city and, therefore, an employee posted at Patna is entitled to draw HRA @ 15% of his actual basic pay drawn. As per the case of the employee, the Joint Hindu Family of which he was a member, had a house/residence and he had occupied the same on rent at Patna.

8. Relevant portion of the department's letter dated 30th June, 2013, which incorporates special provisions in respect of employees transferred to NF Railway reads as under:-

"8.2 Special provision in respect of employees transferred to N.F. Railway.

a. A Railway employee who has all India transfer liability or, in the exigencies of public service, is posted on transfer to the N.F. Railway, excluding Katihar Division, will be permitted to retain railway accommodation allotted to him/her at the last station or his/her posting, on payment of normal rent/single flat rate of licence fee/rent for the first two months and thereafter 1 1/2 times the normal rent/flat rate of licence fee/rent. However, officers posted subsequently to Katihar Division will continue to get this benefit on personal basis.

b. Staff posted to the Kathir Division of N.F. Railway will be governed by the rules and orders, as applicable to the generality of railway employees in regard to retention of quarters and payment of licence fee/rent therefor. The eligibility to these concessions of staff initially posted on transfer to N.F. Railway Divisions other than Katihar, will cease if and when they are posted to any station in Katihar Division."

9. The Railway Board vide letter No. E (P&A)II-83/HRA-29 dated 30th June, 1984, had examined the question of payment of HRA to railway employees posted in the States of Assam, Meghalaya, Nagaland, Manipur etc. and had accorded as under:-

"Sub: Allowance and facilities for Railway employees serving in the States and Union Territories of North Eastern Region-Improvements thereof.

The question of payment of House Rent Allowance to railway employees who are posted in the States of Assam, Meghalaya, Manipur, Nagaland, and Tripura and the Union Territories of Arunachal Pradesh, Mizoram and Andaman & Nicobar Islands has been considered and the President is pleased to decide as follows:-

(a) Railway employees who were in occupation of hired private accommodation at the last station of posting before transfer to any of the State/Union Territories mentioned above, may be allowed to draw House Rent Allowance admissible to them at that station.

(b) Such railway employees may also be allowed to draw, in addition to (a) above, House Rent Allowance at the rates admissible at the new place of posting in the aforesaid states/Union Territories in case they live in hired private accommodation.

(c) These orders will take effect from 1st November, 1983 and will remain in force for a period of three years upto 31st October, 1986.

3. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

4. Hindi version is enclosed."

10. A reading of the special provision 8.2 would elucidate that a railway employee posted on transfer to NF Railway, except Katihar Division, is entitled to retain railway accommodation allotted to him/her at the last station of posting on payment of normal rent/single flat rate of licence fee/rent for the first two months and thereafter at a rate of one and a half times the normal rent. Letter of the Railway Board dated 30th June, 1984 relates to railway employees, who are in occupation of hired private accommodation at the last station of posting before being transferred to the specified States. Pertinently, there is a clear stipulation that the HRA admissible to them would be that as was last paid at that station. In other words, it would be a static or fixed amount at the said place of posting and would not be enhanced. Clause "b" of the said letter postulates that an employee can also draw HRA at the rates applicable at the new place of posting, in case he/she lives in a hired private accommodation. Thus, two HRAs become payable to an employee posted in the said States under clauses "a" and "b". The HRA at the place of posting is a matter of right, whereas HRA at the first place of posting is only by way of a concession.

11. The Railway Board by, a subsequent letter dated 4th September, 1986 has clarified that the aforesaid concession in respect of the last station posting granted to a railway servant in terms of the letter dated 30th June, 1984, would not change and would be a fixed sum. Relevant portion of the said letter reads as under:-

12. At this stage, we would like to reproduce the reasoning given by the Tribunal to allow the prayer and hold that the employee would be entitled to HRA for the last station posting at the enhanced pay scale. The said reasoning reads:-

"8.2 The Railway Board's letter No. E (P&A) II-83/HRA-29 dated 30.6.1984 contains the decision of the President that the Railway employees who were in occupation of hired private accommodation at the last station of posting before transfer to any of the States of Assam, Meghalaya, Manipur, Nagaland, and Tripura and the Union Territories of Arunachal Pradesh, Mizoram and Andaman & Nicobar Islands, may be allowed to draw HRA admissible to them at that station. While clarifying point no. 4, the Railway Board, vide its letter dated 4.9.1986, has not stated that the quantum of HRA at the last station, where the family of the transferred Railway employee continues to stay, would not change with reference to pay of the Railway servant at the new place of posting, nor has it stated that the Railway servant will not be entitled to HRA with reference to his pay at the new place of posting. It has only been clarified that the concession will be available to the Railway servants, without any change, till the concerned Railway servants remain posted in North-Eastern Region and Andaman & Nicobar Islands and the family continues to stay at the last station. That is to say that the concession which has been granted by the Railway Board, vide its letter dated 30.6.1984, will be available without any change, meaning thereby that the terms and conditions for payment of HRA contained in the letter dated 30.6.1984 will remain unchanged. The concession which has been granted by the Railway Board, vide its letter dated 30.6.1984, is that Railway employees who were in occupation of hired private accommodation at the last station of posting before transfer to any of the States of Assam, Meghalaya, Manipur, Nagaland, and Tripura and the Union Territories of Arunachal Pradesh, Mizoram and Andaman & Nicobar Islands, may be allowed to draw HRA admissible to them at that station. It has not been stipulated in the said letter dated 30.6.1984 that the Railway employee may be allowed to draw the same quantum of HRA which he was getting at the last station where his family continues to stay. As per Government orders/rules pertaining to payment of HRA to Government employees, HRA is payable with reference to the pay drawn by them from time to time and there is no concept of any fixed HRA payable to regular employees because their pay varies from time to time on grant of increments and/or promotion from lower post to higher post and/or reversion from higher post to lower post. Therefore, nonpayment of HRA to the applicant with reference to his pay drawn in N.F. Railway, Guwahati, at the rate applicable to Patna, does not stand to reason; besides being contrary to the decision of the President conveyed in the Railway Board's letter dated 30.6.1984 (ibid)."

It is difficult to appreciate and understand the logic behind the said reasoning. A reading of the letter dated 30th June, 1984, would indicate that an employee posted to NF Railways is entitled to two HRAs. The first HRA is payable as per the place of actual posting. The second HRA is the same as paid to the said employee at the last station of posting before he was posted to the States of Assam,

Meghalaya, Nagaland, Manipur, Tripura etc. In other words, the letter grants a concession and indulgence to the employee as he is paid the HRA at the rate which was being paid at the place of his last posting. The amount so fixed depends upon the basic pay being paid to the employee at the place of his last posting, before he was transferred and posted to the States of Assam, Meghalaya, Nagaland, Manipur, Tripura, etc. This payment does not deny and the employee would get the HRA payable to him on his posting to the States of Assam, Meghalaya, Nagaland, Manipur, Tripura etc. The current HRA would accordingly depend upon the basic pay being drawn by him at the new place of posting. In this way, the employee does not suffer and continues to get HRA on his current basic pay while being posted to the States of Assam, Meghalaya, Nagaland, Manipur, Tripura etc. This is in terms of paragraph 1703 of the Indian Railway Establishment Code. By way of concession, the employee also continues to draw the HRA, which he was getting at the last place of posting as per the basic pay he was then drawing. The said concession is certainly not iniquitous and does not fall foul of Article 14. It also does not fall foul of paragraph 1703 of the Indian Railway Establishment Code. The said paragraph does not, in fact, permit payment of two HRAs, which became payable in terms of the Railway Board letters dated 30th June, 1984 and 4th September, 1986.

13. It is also difficult to perceive and accept the argument that payment of the second HRA on the basis of pay last drawn at the earlier place of posting is iniquitous or absurd. There is a rationale behind the said formula, which is perceptible and clear. The employee is paid additional HRA, equal to the fixed sum which he was already getting. This payment continues and is not stopped. The employee would be paid the HRA as applicable at the new place of posting in the States of Assam, Meghalaya, Nagaland, Manipur, Tripura etc. The said HRA at the new place of posting would depend upon his current/new basic pay. Fixation of pay scales etc., are matters of policy, which take into account several factors. Normally, Courts do not interfere in fiscal matters like fixing rates of HRA etc., unless the policy is ex facie arbitrary and displays apparent discrimination. The criteria for payment of two HRAs in the present case would be identical and equally apply to all employees, who get posted in the specified States. Paragraph 1703 of the Indian Railway Establishment Code quoted above shows that HRA can vary from 5% to 30% of the actual basic pay drawn. It is dependent upon the place of posting and the pay scale. Transfers are incidents of employment and not by way of punishment. If we accept the reasoning of the Tribunal, then rates of HRA should be identical or the rate of HRA should also change if the family of the employee takes a rented accommodation at another or a different place. Mere possibility of incongruities in some odd situations would not make the policy/letter violative of Article 14 of the Constitution, as was observed by the Supreme Court in *State of Karnataka & Another v. Mangalore University Non-Teaching Employees Association & Others*, (2002) 3 SCC 302:-

"10..... The complaint based on Article 14 of the Constitution cannot be judged by adopting a doctrinaire approach or by having regard to individual cases. It is

not prudent or pragmatic to insist on a mathematically accurate classification covering diverse situations and all possible contingencies in view of the inherent complexities involved in fixing the scales of allowances based on the places of work.....

While formulating such rules it is difficult to envisage all situations and facts peculiar to a few places here and there. A legislative provision or an executive order of general application does not become unconstitutional merely because, in its actual application, it turns out to be disadvantageous or inequitable to certain individuals or a small section of people. Government should not take note of individual cases of hardship and afford relief wherever such relief is genuinely needed; but the rule or the provision does not become bad or obnoxious to Article 14 for the reason that the criterion adopted in the case of an "A" Class city is not extended to a "B" or "C Class city."

In light of the aforesaid, the policy of the Railways as expressed in the letters cannot be held to be discriminatory or arbitrary.

14. A reading of the order dated 15th January, 2008 passed in CWJC No. 10123 of 2006, Union of India & Ors. Vs. Ashes Kiran Prasad & Anr. would indicate that the change in the writ petition was to the order of the Central Administrative Tribunal dated 1st December, 2014, by which the employee was directed to be paid HRA for occupation of the house at Patna at the rate applicable to house rent allowance at Patna, though, the employee was posted at Hajipur. The Court noticed that the employee had been permitted to hire an accommodation at Patna due to paucity of government accommodation at Hajipur. In these circumstances, the employee had submitted that he had taken a house on rent at Patna, which belonged to a Joint Hindu Family/Hindu Undivided Family of which he was a member and, therefore, he was entitled to payment of HRA. Attention was drawn to one line in said order to the effect that "The House Rent Allowance for the permissible occupation of own house at Patna should commensurate with that", we would observe is not the sole basis of making the said finding and granting relief to the employee. The primary consideration was that the employee, though posted at Hajipur, Bihar, could not be provided accommodation due to paucity of government accommodation at Hajipur. It cannot be said that this judgment or decision re-writes all principles of HRA or has the effect of negating paragraph 1703 of the Indian Railway Establishment Code. The decision should be confined to its own facts.

15. There is another reason why the writ petition filed by the Union of India should succeed. As noticed above, the employee was posted and had remained at Gauhati, from 30th October, 2003 till 26th October, 2007. The OA claiming the arrears was filed under Section 19 of the Administrative Tribunal Act, 1985, in the month of December, 2013. The prayer for payment of arrears of enhanced HRA for the aforesaid period was clearly barred by limitation. Section 21 of the aforesaid Act states that a Tribunal shall not admit an application under clause (a) and (b) if they are barred by limitation, i.e. not filed within one year from the

date on which the final order is made, or where an appeal or representation is made as mentioned in clause (b) of sub-section (2) to section 20 and a period of six months has expired without final order being made, and within one year from the date of expiry of the said period of six months.

16. The employee, in view of the aforesaid position, had relied on the decision in Union of India and Ors. Vs. Tarsem Singh, , (2008) 8 SCC 648, which examines principles underlying continuing wrongs and recurring/successive wrongs. A "continuing wrong" refers to a single wrongful act which causes a continuing injury. "Recurring/successive wrongs" are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. In Balakrishna S.P. Waghmare vs. Shree Dhyaneshwar Maharaj Sansthan, , AIR 1959 SC 798, it was observed that the very essence of a continuing wrong is that the offending act creates a continuing source of injury and renders the doer of the act responsible and liable for continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. In this connection, it is necessary to draw a distinction between injury caused by a continuing act and what may be described as the effect of the said injury. Thereafter, reference was made to M.R. Gupta Vs. Union of India, , (1995) 5 SCC 628, wherein it is observed that so long as an employee is in service, a fresh cause of action arises every month, when he is paid monthly salary on the basis of a wrong computation made contrary to the rules and in such cases, he would be entitled to get his pay properly fixed for the future and the question of limitation would arise for recovery of the arrears. His consequential claims such as promotion etc. may be subject to laches/limitation. In Tarsem Singh (supra), it was held as under:-

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases 5 relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of

the writ petition."

The aforesaid decision does not support the employee and would go against him. The present case is not of a continuing cause of action. As noticed above, a distinction has to be drawn between an injury caused by a wrongful act and what may be described as the effect of the said injury. The alleged wrongful act, as per the employee, had occurred during the period 30th October, 2003 till 26th October, 2007 when the "correct" HRA was not paid to him. There was no continuance or recurrence thereafter, though the effect of the "short" payment would continue, till payment as claimed, is made. The OA in question was filed only in December, 2013 and was, therefore, clearly barred by limitation. Even if there was recurrence, limitation of three years would apply.

17. We are conscious and aware that the plea of limitation was not specifically raised by the Union of India in their reply, which to us was perplexing and confusing. What is, however, apparent is that the employee in the OA had mixed up two causes of action, which included the second relief regarding the HRA payable consequent to the employee's posting to Jaipur in North-Western Railway with effect from 27th October, 2007. The second relief prayer is the subject matter of W.P. (C) No. 4679/2015 titled Ashes Kiran Prasad vs. Union of India & Ors. We find that the impugned order is silent and does not examine and decide the contentions raised before us on the question of payment of double HRA to the employee at Jaipur. We do not know whether the said contention, in so many words as raised before us, was in fact raised before the Tribunal. However, we can treat the prayer as rejected as the same has not been allowed, albeit without discussion and elucidation.

18. In these circumstances, we would remit the question raised before us relating to payment of HRA for the period after 27th October, 2007 to the Tribunal, for a fresh decision on merits. We clarify that we have not expressed any opinion on the said aspect. Thus, an order of remand would be justified, for the Tribunal is the court of the first instance. We would, however, clarify that the question of payment of HRA with regard to the period between 30th October, 2003 to 26th October, 2007, when the employee was posted at Gauhati in NF Railway would not be examined as we have allowed WP(C) No. 6207/2015 filed by the Union of India and held that the employee Ashes Kiran Prasad would not be entitled to enhanced or higher HRA.

19. The writ petitions are accordingly disposed of. In the facts of the present cases, there will be no order as to costs.