

(2011) 08 DEL CK 0098
In the Delhi High Court
Case No : Writ Petition (C) 5326 of 2011

Asok Kumar G.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Citation : (2011) 08 DEL CK 0098

Hon'ble Judges : Sunil Gaur, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Ankur Chhibber, for the Appellant; Sunil Kumar, Alok K. Shukla and Vijay, Law Office, CRPF, for the Respondent

Judgement

Pradeep Nandrajog, J.—Learned Counsel for the Respondents states that he has yet to receive any instructions with respect to the impugned order dated 7.7.2011 (Annexure P-4).

2. Since a legal issue arises for consideration, we are deciding the writ petition without awaiting a counter affidavit to be filed and the reason for the urgency is that Petitioner's request seeking voluntary retirement was acceded to by the Respondents. The Petitioner had to voluntarily retire and hence to be relieved in the afternoon of 31.7.2011.

3. Having accepted the Petitioner's request to be voluntarily retired, the impugned order dated 7.7.2011 was issued which reads as under:

To,

No. 881550019 SM/PS

Asok Kumar G

Law Branch, Dte Genl, New Delhi

Subject: Reg. HRA Recovery

A copy of DIG (Adm) Dte General ION No. P.1-33/2010.11. Accts.7 dated 05/07/2011 regarding recovery of HRA drawn by you w.e.f. 08/2008 to 10/2010 for Rs. 1,74,151/-(Rupees One Lakh Seventy Four Thousand One Hundred Fifty One) only while posted in the Office of DIG, CRPF Srinagar is enclosed herewith. Since you are proceeding on V/R w.e.f. 01/08/2011, you are directed to remit the amount into Govt. treasury before proceeding on VR as desired by DIG (Adm).

Encl:1

(Dr.Pratap Singh)

DIG (Law)

4. Enclosure-1 referred to in the letter dated 7.7.2011 reads as under:

Sub: Regarding recovery of HRA.

With reference to office order of DIGP, CRPF, Srinagar South (J&K) No. H.III-2/2011 Accts.II dated 21/6/2011 the recovery order of HRA in respect of force No. 881550019 Inspector/Steno (NOW SM/Stn) Ashok Kumar w.e.f. 08/08 to 10/10 amounting to Rs. 1,74,151/-has been received. Accordingly give orders to force No. 881550019 Inspector/Steno (NOW SM/Stn) Ashok Kumar G. posted in your section, who is being voluntarily retired from service w.e.f. 01/08/2011 (AN) to deposit a sum of Rs. 1,74,151/-before his voluntary retirement.

5. Suffice would it be to state that for the period August 2008 - October 2010, HRA paid to the Petitioner in sum of Rs. 1,74,151/-is sought to be withdrawn and a direction stands issued to the Petitioner to remit the same.

6. Since the Petitioner superannuated with effect from the afternoon of 31.7.2011, the Respondents have achieved the object of their order which is impugned before us, inasmuch as a sum of Rs. 1,74,151/-has been withheld from out of the DCRG amount payable to the Petitioner.

7. Apart from the fact that the impugned order suffers from the vice of denial of natural justice inasmuch as the same has not been preceded by any show-cause notice served upon the Petitioner requiring him to respond as to why the HRA benefit be not withdrawn, we find the recovery to be contrary to law on 2 counts.

8. But before the law, the relevant facts need to be noted.

9. Working as Sub-Inspector (Stenographer) with CRPF, the Petitioner was last posted to RTC-II at Avadi in the State of Tamil Nadu.

10. Admittedly, No. government accommodation was provided to the Petitioner at Avadi and thus, as per rules, he WP(C) 5326/2011 Page 3of 10 was sanctioned House Rent Allowance. Reason was that the Petitioner had to hire an accommodation where he and his family could reside.

11. Petitioner remained at RTC-II Avadi till May 2007 and with effect from June

2007 was posted to the office of the IG Police, CRPF, Srinagar.

12. Claiming to be a dutiful soldier who obeys the command of his senior officers, Petitioner proceeded to Srinagar and reported for duty in the office of the IG Police, CRPF at Srinagar. Though entitled to a family accommodation at Srinagar, Petitioner made a request that he be entitled to retain his family at Avadi and for which HRA be sanctioned to him.

13. Reason why Petitioner made the aforesaid request was a Government of India Office Memorandum No. 2(38)/2001-E.II(P) dated 24.9.2003 which reads as under:

Central Government employees posted to the specified States/Union Territories from outside the N-E Region who are keeping their families in rented houses or in their own houses at the last place of posting outside the N-E Region, will be entitled to HRA admissible to them at the old station and also at the rates admissible at the new place of posting in case they live in hired private accommodation irrespective of whether they have claimed transfer TA for family or not subject to the condition that hired private accommodation or owned house at the last station of posting is put to bona fide use of the members of the family. These concessions are admissible also to those posted to Andaman and Nicobar Islands and Lakshadweep.

The benefit of two HRAs is admissible also to those employees who on their transfer keep their families in the previous station in own/hired accommodation after vacating Government accommodation due to their transfer to N-E Region etc. - OM No. 2(38)/2001-E.II(B) dated 24.9.2003.

14. The OM aforesaid pertains to the North-Eastern region and make eligible Central Government employees posted in the North-Eastern Region to 2 HRAs. Notwithstanding State of Jammu & Kashmir not being in the North-Eastern region, the Petitioner was relying upon an office order dated 24.10.2003 issued by the Director General CRPF which extended the benefit of the OM dated 24.9.2003 to those who were posted in the State of Jammu & Kashmir. The OM dated 24.10.2003 issued by the Director General CRPF reads as under:

To,

Sh.V.P.S. Panwar,

Addl. DIGP (Adm),

Office of the IGP (Ops), CRPF,

Jammu (J&K)

Subject: Allowing HRA at previous station rates when posted to J&K.

Ref. your letter No. H.III-1/2003/04-Accts-II dated 24.9.2003.

2. As per GOI, Ministry of Urban Affairs & Employment, Directorate of Estates,

OM No. 12035/2/20 II (pt.II) dated 15/9/1998 (copy enclosed), a posting to Jammu Kashmir may be treated at par with that of posting to North-Eastern Region. Therefore, orders to allow HRA at previous station rates on posting to NES Region are equally applicable for posting to J&K also.

13. Needless to state, a conjoint reading of the Government of India OM dated 24.9.2003 and the OM issued by the Director General CRPF, being the memorandum dated 24.10.2003, would be that CRPF officers presently posted in the State of Jammu & Kashmir would be entitled to HRA for the previous station where the family was kept and additionally to either accommodation or HRA applicable in the State of Jammu & Kashmir.

14. So reading the 2 OMs, on 13.7.2007, the Competent Authority sanctioned to the Petitioner that he could keep his family at Avadi and draw HRA @30% of his basic pay plus DP per month with effect from 2.6.2007. The sanction order dated 13.7.2011 reads as under:

Sanction Order

Under the provisions contained in DIPG (Adm) Dte Genl CRPF letter No. A.II2/06-99-Adm-I(Vol-I) dated 7/1/2000, No. 881550019 Insp/Steno Asok Kumar G of this office is hereby permitted to keep his family at Avadi (Chennai) (Old Station) and to draw House rent Allowance @30% of his basic pay plus DP per month, w.e.f. 02/06/07 i.e. from the date of relief on transfer from RTC-II Avadi to till date of his posting.

(This has the approval of IGP on note sheet dated 13/07/07).

17. The Petitioner was admittedly sanctioned HRA as Petitioner started residing in the Unit mess. Everybody was happy.

18. In July 2008, the Petitioner was directed to work in the office of the DIG Police CRPF in Srinagar. In other words, the Petitioner continued to be at Srinagar but with the difference that earlier he was working as Stenographer in the Office of the Inspector General and with effect from July 2008 was required to report for duty in the office of the DIG Police. The Petitioner took care that the benefit of HRA which was granted to him when he was working in the office of IG Police CRPF be extended to him while he would be working in the office of the DIG Police. Based on his application, sanction was conveyed vide order dated 10.7.2008, which reads as under:

Sanction Order

Under the provisions contained in DIGP (Adm) Dte Genl CRPF letter No. A.II-2/96-99-Adm-I (Vol-V) dated 7/1/2000, No. 881550019 Insp/Steno Asok Kumar G of this office is hereby permitted to keep his family at Avadi (Chennai) (Old Station) and to draw House Rent Allowance @30% of his basic pay plus DP per month, w.e.f. 1/7/08 i.e. from the date of relief on transfer from IGP, CRPF, Srinagar till date of his posting in this office.

(This has the approval of DIGP on note sheet dated 10/07/08).

19. Once again, everybody was happy.

20. The happiness of the Petitioner turned into sorrow, when as noted herein above, on 7.7.2011 he was directed to refund the sum of Rs. 1,74,151/-being HRA received by him with effect from the month of August 2008 till the month of October 2010.

21. As could be read from the Office Order dated 7.7.2011 and its Enclosure-1, dated 5.7.2011, contents whereof have been extracted by us herein above, No. reasons are to be WP(C) 5326/2011 Page 7 of 10 found as to why the Respondents took the action.

22. With the aforesaid facts, the legal issues which arises need now to be noted.

23. To the reader it would be apparent that as regards the Petitioner he contends firstly; that having No. role to play in the HRA being sanctioned and nothing being alleged against the Petitioner of having played a fraud or made a misrepresentation, the Respondents having paid HRA to the Petitioner, gave birth to a belief in the mind of the Petitioner that he was entitled to the HRA which he received and hence spent the same. Having spent the same by keeping the family at a rented accommodation in Avadi, Petitioner has acted to his detriment and thus Respondents would be estopped from asserting to the contrary. Second contention urged is that the Government of India OM dated 24.9.2003 pertaining to posting in the North-Eastern region being extended to posting in Jammu & Kashmir by and under the Office Order dated 24.10.2003 issued by the DG CRPF and the same would entitle the Petitioner to HRA which was rightfully sanctioned. As a limb of this legal submission, it is urged that surprisingly enough the Respondents continued to make Petitioner eligible for HRA for the period June 2007 till July 2008 when the Petitioner was working in the office of the IG and there is No. reason given as to why the same benefit should be withdrawn when the Petitioner worked on the same post in the office of the DIG CRPF from the month of August 2008 till October 2010.

24. Learned Counsel for the Respondents states that the entitlement of HRA would be when the Group Centre of the Unit to which the Petitioner was attached was having its headquarters in the region i.e. in the State of Jammu & Kashmir. In the instant case the Group Centre was not having its headquarters in the State of Jammu & Kashmir.

25. The reason given by the Respondents has No. legs to stand for the reason Petitioner's posting, firstly in the office of the IG CRPF at Srinagar is not in relation to the Unit as a whole being posting. Petitioner has been picked up as an individual and hence has been posted in the State of Jammu & Kashmir.

26. Thus, the petition must succeed in law as well as on the principles of estoppel which is based on equity.

27. The legal point on which the petition must succeed is that the Government of India OM dated 24.8.2003 relating to place of posting of Central Government employees in the North-Eastern region has been extended by the Director General CRPF to postings in the State of Jammu & Kashmir. Thus, we find that the Respondents had acted as per law when they sanctioned HRA to the Petitioner for the period he would be posted at Srinagar.

28. The Petitioner would also be entitled to the relief in the alternative, for the reason he neither played a fraud nor made any misrepresentation when he claimed HRA and the same was sanctioned. Post sanction, HRA was paid to Petitioner on an express understanding of the Respondents that the Petitioner could retain his family at a rented accommodation at Avadi and pay the rent to the landlord. The HRA received by the Petitioner was paid over by the Petitioner to the landlord at Avadi where Petitioner's family was residing. The Respondents would be estopped from asserting to the contrary and for which we may only note one decision of the Supreme Court; being the decision reported as Syed Abdul Qadir and Others Vs. State of Bihar and Others, (refer to para 58).

29. The petition stands disposed of quashing the impugned order dated 5.7.2011 as also the impugned order dated 7.7.2011.

30. Mandamus is issued to the Respondents to pay over the sum of Rs. 1,74,151/-deducted from the DCRG to the Petitioner. The sum would be paid to the Petitioner within a period of 4 weeks from today failing which the amount would be paid with simple interest @9% per annum.

31. No. costs.

32. DASTI.

CM No. 10811/2011

Since the writ petition stands disposed of the instant application seeking stay of the impugned order stands disposed of as infructuous.