

(2024) 11 CAT CK 0030

In the Central Administrative Tribunal

Case No : Original Application No. 260, 00466 Of 2023

Brahmananda Sahoo

APPELLANT

Vs

Union Of India, Represented Through Its Director General Of
Post, Dak Bhawan, New Delhi-110001 & Ors

RESPONDENT

Date of Decision : 30-11-2024

Acts Referred:

Citation : (2024) 11 CAT CK 0030

Hon'ble Judges : Pramod Kumar Das, Member (A)

Bench : Single Bench

Advocate : S. Patra, A.K. Sahu

Final Decision : Allowed

Judgement

Pramod Kumar Das, Member (A)

1. Ld. Counsel for the applicant has submitted that the applicant joined as Postal Assistant in Dhenkanal Division on 3.8.2015 and while working as such he was deputed to Marthapur SO from Kankadahad SO for the period from 7.5.2018 to 31.5.2020 to work as SPM (I/C) Marthapur SO. In terms of the rules, he was drawing the HRA in lieu of non-allotment of any govt. accommodation. The applicant was paid HRA along with monthly salary during the aforesaid period but without giving any notice or opportunity of being heard in compliance with principles of natural justice, the authority concerned started recovery of Rs. 4000/- per month from his salary alleging erroneous payment of Rs.18,137/- towards HRA although he was not entitled to as per the Postal Directorate OM No. 24-3/2010-PAP dated 30.07.2010 as pointed out by the internal Audit. It is stated that the applicant submitted representation against such recovery on 16.02.2023 but since no consideration was given to such representation, in view of the urgency, he has approached this Tribunal in the instant OA with prayer to declare the recovery as illegal and direct the respondents to refund the recovered amount with 12% interest.

2. Respondents filed counter contesting the case of the applicant and objecting the grant of the relief claimed in the OA. The stand taken in the pleadings has been reiterated by the Ld. Counsel appearing for the respondents during hearing to the extent that the applicant had joined as Postal Assistant in Dhenkanal Division on 3.8.2015 and he, while working as such, was deputed to work as SPM, Marthapur SO and worked there as SPM-in-Charge for the period from 7.5.2018 to 31.5.2020. It is submitted that the Drawing & Disbursing Officer, i.e. Postmaster Dhenkanal HO paid House Rent Allowances to the applicant along with his monthly salary till he was relieved.

2.1 Internal audit of Dhenkanal HO was carried out by the Audit Party of Director of Accounts (Postal), Cuttack, which observed that payment of HRA to the applicant beyond ninety days, for a post where post attached quarter is available, is irregular in terms of instructions contained in Postal Directorate (Establishment Division) OM No. 24-3/2010-PAP dated 30.07.2010 and, accordingly, instructed to recover of Rs. 45,552/-. It is submitted that the objection of the audit was duly communicated to the applicant by the Postmaster Dhenkanal HO and recovery @ Rs. 4000/- from his salary was started from April, 2023. Therefore, since the drawl of the HRA was against the rules, the authorities have every power to recover the same. Hence, he has prayed that this OA being devoid of any merit is liable to be dismissed.

3. After considering the submission recorded above, perused the pleadings and materials placed in support thereof. According to Ld. Counsel for the respondents, the audit objected drawl of HRA during his incumbency as incharge SPM of Marthapur SO in terms of the Director, New Delhi Letter dated 30.07.2010 and, therefore, the context of the letter being relevant is extracted herein below:

"Sub Non-drawal of HRA to the officiating Sub-Postmasters working in offices having attached quarters. Sir/Madam,

I am directed to intimate that the staff side has taken up the above item in the Departmental Council (UCM) for discussion as agenda. The staff side has alleged that HRA has not been paid to the officials who are working against such vacancies resulting loss in emoluments and requested for issuing instructions to the Circles.

2 The attention of the Circle is drawn to Directorate letter no.24-3/76-PAP dated 22-09-77 wherein it was decided for payment of compensation in lieu of rent free accommodation to Government servants for a maximum period of 3 months when he is posted to officiate in a post to which rent free accommodation is attached but which is not provided to him.

3 Further, attention is drawn Directorate letter no.24-3/76-PAP dated 20-08-79 wherein instructions were issued for payment of House Rent Allowance as admissible to all Government servants not entitled to rent free accommodation for a maximum period of 90 days provided the vacancies are short term ones

involving local arrangements. These instructions have not undergone any change and continue to apply.

4 It is, therefore, requested to reiterate these instructions of Directorate letter no.243/78 dated 20-08-79(copy enclosed) to all the subordinate units for grant of HRA to the Government servants who are officiating as Sub-Postmasters where rent free accommodation is attached and not provided to him and to avoid any grievances from the staffing this regard.

3 This issues with the approval of DDG (Establishment)."

(Emphasis supplied)

4. According to Ld. Counsel for the applicant, applicant was not posted "to officiate" in the post of SPM, Marthapur SO while working as PA Dhenkanal HO, as the case may be, rather in his present capacity as PA he was kept "incharge" of the post of SPM, Marthapur SO. It is also submitted that he was kept incharge of the said post in addition to his own post as PA by the Supt. of Post Offices, who is not the competent authority to post a PA to officiate in the cadre of LSG, i.e. SPM, Marthapur SO. Further, by drawing our attention to the order dated 23.05.2019, it is submitted by Ld. Counsel for the applicant that in the counter it has been stated that the applicant was deputed to work as incharge SPM, Marthapur SO but the order dated 23.05.2019 itself would establish that there is no whisper that the applicant was "deputed" to discharge the duties of the SPM, Gadasila SO. Further, Ld. Counsel for the applicant drew attention of this Bench to the bottom part of the said order to establish that had the applicant been deputed to the post SPM, Gadasila SO, it should have been mentioned to relieve him from the post of PA, as mentioned in respect of others. Ld. Counsel for the applicant has also stated that since he is no way responsible for drawl of HRA, by applying the DoP&T OM dated 03.10.2022, which was issued in pursuance of the order of the Hon'ble Apex Court in the case of State of Punjab & Ors Vs. Rafiq Masih, CA No. 11527 of 2017 (arising out of SLP(C) No. 11684 of 2012), recovery in the guise of wrongful payment of HRA driven the applicant to great hardship and, thus, is not recoverable.

5. Respondents did not produce any document to establish that the applicant was deputed exclusively to work as SPM, Marthapur SO or he was posted there on officiating basis. I do also appreciate that for posting an employee in higher post for officiating, it can only be done by the competent authority in accordance with rules. The Suptd. of Post Offices is competent to post the applicant to officiate in LSG cadre post of SPM, Marthapur SO is in doubt. The circular dated 30.07.2010 based on which the audit raised the objection clearly provides that compensation in lieu of rent free accommodation to Government servants for a maximum period of 3 months is allowable when an employee is posted to officiate in a post to which rent free accommodation is attached but which is not provided to him. It is seen that the respondents started recovery solely based on the objection raised by the audit without considering the most vital aspect of the matter as to

whether keeping the applicant, who was continuing as PA, as in charge SPM Marthapur SO also would tantamount to officiating so as to deprive him the HRA in terms of the Directorate letter dated 30.07.2010. The respondents also started recovery even before giving consideration to the representation submitted by the applicant. I am reminded by a celebrated decision titled Mohinder Singh Gill Vs. Chief Election Commr., (1978) 1 SCC 405, of which the following paragraph deserves extraction:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji AIR 1952 SC 16 .

‘9. ... public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.’

6. In view of the law stated above, the stand taken in the counter to justify the action of the respondents ought not to have taken into consideration but even that is taken into account the same cannot withstand the scrutiny of law in support of their action to recover the amount. The anvil of the discussions made above, the net result is that the recovery of the HRA made by the Respondents solely based on the audit objection shows total non-application of mind and misrepresentation of the Directorate letter dated 30.07.2010 vis-a-vis the real case of the Applicant. Hence, the recovery of HRA to the tune of Rs. 45,552/- as ordered based on the audit objection is declared illegal and arbitrary and resultantly, the Respondents are directed to refund the amount, if any, recovered from his salary. The compliance order to the above effected is directed to be issued within a period of 30 days from the date of receipt of a copy of this order.

7. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.