

(2008) 05 DEL CK 0232

In the Delhi High Court

Case No : Writ Petition (C) No. 20215 of 2005

Col. R.P.S. Dhillon

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-05-2008

Acts Referred:

Citation : (2008) 104 DRJ 334

Hon'ble Judges : Sanjay Kishan Kaul, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : Karan Singh Bhati, for the Appellant; Jyoti Singh, for the Respondent

Judgement

Mool Chand Garg, J.—The petitioner was serving as Colonel in Indian Army. He was transferred to NCC Group Headquarters Rajasthan at Jaipur (a peace station), where he was also provided with family accommodation. Thereafter, he was transferred to NCC Headquarters Jorhat (Assam) (A non hard Military Station). He joined his duties there on 4.12.1999. It has been submitted that as per para 8 of Special Army Order (SAO) 10/S/86 the service officers posted to NCC Dtes/GPHQ/Units have to be treated as part of the local garrison and are entitled for allotment of Government accommodation along with other service officers posted in that station.

2. It is the case of the petitioner that after his posting to Jorhat(Assam), he applied for a separated family accommodation to the Army Headquarters at Delhi Cantonment. However no such accommodation was allotted. In fact a non-availability of accommodation certificate (NA) was also issued to him. Thereafter he hired a accommodation in Noida (within the vicinity of the Municipality of Delhi) and claimed HRA at Delhi rate for the period w.e.f 13.3.2000 to 23.10.2003 which according to him was payable as per the policy letter issued by the Central Government dated 12.11.97 and 19.5.2000, on account of his posting to Jorhat which is part of Assam (non-military hard station).

3. The relevant clause of the letter dated 12.11.1997 which talks about

accommodation to be provided to the concerned officer like the petitioner is reproduced hereunder:

OFFICERS AND PERSONNEL BELOW OFFICER RANK ALREADY POSTED IN ASSAM AND TRIPURA:

i. Officers and personnel below officer rank posted in Assam and Tripura and residing with their families will be given an option to move their families to selected place of residence including any of the separate family station at Government expense. Therefore, such families will be regulated at the scale applicable for permanent transfer inclusive of transportation of personal effects transfer grant and backing allowances etc.

ii. Free single accommodation including furniture [if any], light and water.

iii. Retention of married accommodation by the family at previous duty station or selected place of residence [from the list of stations where provisions have been made for accommodation for separated families] at normal concessional charges for furniture, electricity and water if permitted by the stations commander or allotting authority.

iv. Relief as per Government of India, Ministry of defense Letter No. 1(16/87/D [pay/ services] dated 18 Feb. 1998.

v. For JCOs, NCOs Ors. and NCs (E)-Concessions other than TA/DA. Retention of family accommodation subject to restriction as laid down in AI 19/51 and AI/6/99 as amended from time to time for JCOs/OR.

4. On the strength of the aforesaid and other letters referred by the petitioner in his writ, he submits that since he was not provided with a separated family accommodation at Delhi after shifting from Jaipur, he became entitled to hire a house at a selected place of residence which he did by hiring a house at Noida in the vicinity of municipality of Delhi and thus claimed HRA at Delhi rate but the respondents have wrongfully refused the same. The petitioner in this regard has also relied upon the letter dated 29.9.99 issued by Government of India. The relevant extract of that letter is also been reproduced hereunder:

2.4 HRA to Armed Forces officers will be admissible under the following conditions:

b. HRA will be governed by the place of posting of the officer including non-military station. However in respect of officers posted to Ops./Field/areas/modified field areas, HRA may be allowed at the rates applicable at last duty station/separated Family station/selected place of Residence(SCR) provided the officer has not been allotted Separated Family (SF)) accommodation. HRA will cease to be drawn from the date from which an accommodation has been allotted for the family of the officer. HRA for the family at the rate applicable for selected place of residence, if otherwise admissible may be allowed if the family actually resides at that place and the factual position is verified periodically by

the competent authority and no accommodation certificate is granted by the Competent authority about the availability of accommodation for the family at that place.

5. The petitioner has also relied upon para 110 of SAO/10/S/86 which reads as under:

Officers posted to field service areas have the following option i.e:

- a. Take their families at Government expenses to a selected place of residence; or
- b. Select any one of the separated family station listed Appendix "E" for hiring of accommodation for separated families or to stations where accommodation has been specifically constructed for them and to move the family to that station at Government expense; or
- c. To retain family accommodation at the last duty station with the permission of the Station Commander or the allotting authority.

6. It may be noted here that the petitioner had been allotted a family accommodation at Jaipur, his last duty station. No Explanation has been given by the petitioner as to why he vacated the said accommodation which he was entitled to hold till the completion of the tenure at Jorhat.

7. Since the petitioner could not get his claim, he also filed a writ petition before Punjab and Haryana High Court at Chandigarh but since no part of cause of action has arisen in the territorial jurisdiction of that court, the said writ petition was withdrawn with liberty to file a fresh writ petition before this Court and accordingly, the petitioner has preferred the present writ petition with the following prayers:

- a. That a writ in the nature of certiorari may kindly be issued for quashing impugned order dated 11.7.2001 and 29.5.2001 passed by respondent No. 3, and impugned order dated 20.9.2001 and 1.3.2002 passed by respondent No. 5 and also the impugned order dated 29.5.2003 passed by respondent No. 4,
- b. That a writ in the nature of Mandamus may kindly be issued directing the respondents to pay HRA at the rate of 30 % of basic pay to the petitioner w.e.f 13.3.2000 to 23.10.2003, less Rs. 15378/- for the period 1.2.2001 to 31.8.2001 at the rate of 7.5 % instead of 30 % as admitted in petitioner's pay slip during August 2001 and January 2002 respectively with interest at the rate of 18 % till the date of payment.
- c. That any other appropriate writ order or direction be issued which is deemed fit and proper in the circumstances of this case.

8. The respondents, however, have denied the claim set up by the petitioner. According to them, the petitioner was entitled to retain his family accommodation allotted to him at his last duty station i.e., Jaipur or he could have hired a house at Jorhat. It is, thus submitted that he was entitled to HRA

only at the rate of 7.5 per cent. Respondents have also denied that the case of the petitioner was to be governed by orders of the Government dated 12.11.1997 or 19.5.2000 or that claim of the petitioner was rejected illegally or that he has been discriminated against Petitioners. According to them, the case of the petitioner is governed by the circular dated 22.10.1991 and a corrigendum issued thereto. The said circular along with corrigendum is reproduced hereunder:

Govt of India

Ministry of Defence,

New Delhi, the 22 Oct 91

To,

The Director General

National Cadet Corps

Ministry of Defence,

New Delhi-110066.

Provision of Separated Family Accommodation Service Officers NCC, whole time officers and P 1 staff posted to NCC at Hard Non NCC, whole time officers and P 1 staff posted to NCC at hard Non Military Stations.

Sir,

1. I am directed to convey the sanction of the President to the provision of separated family accommodation to service officers, NCC Whole time officers and JCOs/NCOs posted to hard non-military station listed at Appendix A in accordance with the laid down procedure and norms relating to allotment of separated family accommodation hiring/rent reimbursement as per SAO of 10/S/86, subject to the following stipulations while posted at hard military stations officers and JCOs/NCOs this category:

a. Allotted separated family accommodation at the last duty station till completion of their tenure at the hard non-military station.

b. If such separated family accommodation is not available, allotted hired accommodation or allowed to hire houses at last duty station on reimbursement basis.

c. If posted from field area to one of the hard non-military stations or from one hard non-military station to another hard non-military station, also allowed.

(i) To send their families at Govt. expense to selected place of residence (i.e., declared home town).

(ii) To select any one of the separated family station listed at Appendix E to SAO 10/S/86 and move the family to that station, provided the station authorities

agree to allot separated family accommodation, or

(iii) To move their families to the nearest military stations for provisions of separated family accommodation either by Govt. allotment or on the reimbursement basis.

2. For separated family accommodation at stations listed in Appendix A to SAO 10/S/86, rules laid down grounds will be

3. The expenditure on this account will be debited to the relevant Head of the defense Service Estimates under the sanctioned budgeted grant.

4. This issues with the concurrence of the Min of Defence/finance vide their UP No. DFA(W) 2712/91 dt. 11.10.91.

Yours faithfully,

Sd/-

(Jaswant Singh)

Under Secretary to the Govt. of India

Government of India

Ministry of Defence,

New Delhi, the 14th day of November 2002

CORRIGENDUM

1. The following amendment may please be carried out to this Ministry's letter No. 6731/SFA/DGNCC/ADM (A-2)/4727/D (Q&C) dated 22.10.91 as amended vide 6731/SFA/DGNCC/ADM (A-2)/349/D (Q&C) dated 05 Dec 2001 regarding "Provision of Separated Family Accommodation - Service Officers, NCC, Whole Time Officers and P 1 staff posted to NCC at hard Non-Military Stations.:

a. The following para to be added after para 1(b):

(c) Permitted to hire Separated Family Accommodation on Rent Reimbursement basis/Claim HRA at any of the SF Station.

b. Para 1 (c) renumbered as Para 1 (d).

2. This issues with the concurrence of the Ministry of Defence/Finance/Works) vide their ID No. 2/F/W-III dated 29 Oct 2002.

Yours faithfully

(D.R. Mehra)

Under Secretary to the Government of India

9. Relying upon the aforesaid circulars, it is submitted that the petitioner who was posted from NCC Directorate Rajasthan (Jaipur) having already allotted a

family accommodation at Jaipur (Peace station) on his posting to NCC Gp. Headquarter Jorhat (hard non military station) on 4.12.1999 was entitled to accommodation of allotment of separated family accommodation in terms of the circular dated 22.10.1991 which stipulates as under:

- a. The officer can be allotted separate family accommodation at the last duty station till completion of their tenure at the hard military station;
- b. If such separated family accommodation is not available, allotted hired accommodation or allowed to hire houses at LAST DUTY station on Rent Reimbursement basis.
- c. If posted from field area to one of the hard non military stations or from one hard non military station to another hard non military station, also allowed;
- i. To send their families at Govt. expense to selected place of residence (i.e., Declared home town).
- ii. To select anyone of the separated family stations listed at Appendix "E" to SAO 10/86 (which is annexed as Annexure "B" to the Counter Affidavit and is at page 75) and move the family to that station, provided the station authorities agree to allot separated family accommodation, or
- iii. To move their families to the nearest Military Stations for provisions of separated family accommodation either by Govt. allotment or on rent reimbursement basis.

10. It is submitted that in view of the aforesaid, the petitioner's case falls within the ambit of the aforesaid government letter and no cognizance can be taken of the provisions of GOI MOD letter dated 12.11.1997 and 19.5.2000.

11. Thus, it is contended that if a person is posted to hard Non Military station from a Peace Station he has an option to opt for separated family accommodation at last duty Station or if the same is not available then to be allotted hired accommodation through the defense Estate Officer or to hire house on HRA basis. In the case of HRA on 3 monthly basis, the plinth area is determined subject to the maximum of Rs. 5000/-. It is submitted that the rate per square feet would depend on the type of city. In such a case the officer has no option to send his family to a selected place of residence.

12. However, if an officer is posted from field area to hard non military station or from one hard non military station to another hard non military station then he has the option to select any of the separated family stations listed in Appendix - E to SAO 10/S/86 or send the family at Government expense to selected place of residence i.e. declared home town. It is pertinent to point out that a reading of the policy of 22.10.91 clearly shows in para 1 (c) (i) that selected place of residence means only declared home town. Every officer has to declare the home town in the official documents and no other place can come in the category of selected place of residence.

13. As regards, the plea of discrimination taken by the petitioner in his writ petition by referring the case of Lt. Col. T.S. Kohli, the submission made by the respondents is that the case of the petitioner is not comparable to the case of Lt. Col. T.S. Kohli in as much as the petitioner was posted from a peace area to a NCC hard non military station while Lt. Col. Kohli was posted from Behram Pur to Dibrugarh. No doubt that Behram Pur was included in the list of hard military station only from 5.12.2001 but the claim of Lt. Col. Kohli covered a period from 2000 to beyond 2001. Since the period extended beyond 2001 as well he is entitled to the HRA claim for selected place of residence from 5.12.2001 onwards. However for the period September 2000 to 4.12.2001 his case will be similar to that of the Petitioner i.e., posting from a peace to a hard non military station and he will also not be entitled to the HRA for separated place of residence (SPR). Since the claim was combined for both the periods, it was inadvertently sanctioned and the money given for the earlier period is now being recovered. Copy of the letter sent by CDA (O) Pune dated 23.5.2008 has been annexed here with the counter affidavit as Annexure R.1 in this regard. The claim of the petitioner for HRA at Delhi rates is thus misplaced.

14. In the rejoinder affidavit, the petitioner while denying the averment in the counter affidavit and has again relied upon the letters of the Government dated 12.11.1997, 19.5.2000 and 29.9.1999 and has reiterated his claim.

15. We have heard learned Counsel for the parties and have gone through the records.

16. It cannot be disputed that the petitioner on account of his posting to Jorhat (Assam) from Jaipur was entitled:

i) to have retained the family accommodation allotted to him at Jaipur after obtaining permission from the concerned Army Authorities or could have hired another accommodation at Jaipur i.e. the last place of duty in case the Army Authorities were not willing to extend the stay of his family in the accommodation allotted to him earlier at Jaipur. It is not the case of the petitioner, that he wanted to stay at Jaipur and was denied such permission to continue in the already allotted accommodation or that he wanted to hire any accommodation in case the separated family accommodation was not available at Jaipur to him.

ii) or to take his family to Jorhat. In that case, he could have either been allotted a separated family accommodation if available or may have hired accommodation and in that case he would have become entitled to HRA @ 7.5% as applicable to that place; or

iii) The petitioner was also entitled to take his family to a selected place of residence as a third alternative in the event of posting from non hard military station to any non hard military station which is not the case. However, even in that case as per the letter dated 22.10.1991 read with corrigendum which has been relied upon by the respondents, the selected place of respondent where the

petitioner could have carried his family would be his home town which is not the case.

17. The various circulars on which reliance has been placed upon by the petitioner do not permit him to take his family anywhere he likes. Thus, mere desire of the petitioner to retain his family at Delhi and for that purpose also to have obtained non availability certificate of separated accommodation of family at Delhi is of no consequence.

18. Thus, we hold that the case of the petitioner will be covered as per the Government of India MOD letter dated 22.10.1991 and the Corrigendum issued thereto and, Therefore, it can only be said, that the petitioner at the most would be entitled to HRA which would be payable at his last duty station.

19. As far as the plea of discrimination is concerned, for the reasons explained by the respondents in their additional affidavit, we find no merits in his contention .

20. The writ petition is thus partly allowed and the petitioner is held entitled to HRA @ 15 % on the basis of his last duty station. A writ of mandamus is issued directing the respondents to pay HRA to the petitioner @ 15% of basic pay for the relevant period within a period of two months if not already paid in terms of the order passed by this Court on 8.5.2007. Accordingly, the writ petition stands disposed of in terms of the aforesaid direction leaving parties to bear their own costs.