
(2010) 05 DEL CK 0249

In the Delhi High Court

Case No : Writ Petition (Civil) No. 20700 of 2005

Hariom Mudgil

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 17-05-2010

Acts Referred:

Citation : (2010) 05 DEL CK 0249

Hon'ble Judges : Indermeet Kaur, J;Gita Mittal, J

Bench : Division Bench

Advocate : Rekha Palli and Punam Singh, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—The present writ petition raises an issue relating to grant and release of House Rent Allowance (HRA) and Compensatory City Allowance (CCA)/ Special Duty Allowance (SDA) to an employee who though on a substantive transfer/posting to a unit outside Delhi, remains attached to the headquarters.

2. This writ petition manifests sheer callousness on the part of the respondents who have refused to comply with several judicial decisions made against them on the very issue raised herein.

3. So far as the facts giving rise to the present petition are concerned, they are undisputed and in a narrow compass. The petitioner was appointed as an ASI(M) on 1st June, 1991 in the CRPF. He was relieved on transfer from 129 Battalion, CRPF and reported to the 104 Battalion, RAF/CRPF on 14th August, 2000. While so posted, an order dated 24th September, 2001 was passed by the IGP, RAF/CRPF attaching the petitioner for duty with the RAF headquarters at New Delhi. The petitioner remain attached at the RAF headquarters, New Delhi for a considerable period. In their counter affidavit, the respondents have stated that the petitioner was relieved from his attachment duty by RAF/HQR, New Delhi for reporting at 104 Bn. RAF/CRPF only with effect from 13th April, 2005.

4. In view of this attachment with the RAF headquarters, New Delhi the petitioner submitted representations dated 3rd September, 2004; 4th September, 2004; 4th January, 2005 and 24th January, 2005 seeking payment of HRA and the SDA to which he was entitled. No order appears to have been passed on these representations necessitating the filing of the present writ petition.

5. The respondents have taken a stand in the writ petition that the petitioner's request was not considered by them for the reason that he was merely on temporary transfer/attachment with the office of the IGP, RAF, New Delhi from his posting with the 104 Battalion of the RAF at Aligarh. The respondents have contended that the petitioner was on the effective strength of 104 RAF, Aligarh sent to the headquarters on temporary duty alone and for this reason was disentitled to payment of any HRA or SDA; further RAF/HQR New Delhi being his touring station he was not entitled for HRA. It is submitted that mere attachment of the petitioner to the headquarters would not entitle him to the payment of HRA or CCA/SDA.

6. The issues raised by the petitioner and the denial of HRA and the SDA by the respondents on these grounds in the case of other persons already stand settled by this Court by the judgment dated 15th May, 1995 disposing of W.P. (C) No. 308/1994. It is noteworthy that this decision was reiterated in several subsequent decisions including the decision dated 26th October, 2003 disposing of W.P.(C) No. 7391/2001 and decision dated 16th November, 2009 in W.P.(C) No. 7582/2009 by this Court. Yet the respondents have failed to apply the principles laid down by this Court so far as the petitioner is concerned, despite his several representations.

7. We may also note that all parties appearing before the court are bound in law to place the correct and complete facts as well as the legal position which would facilitate the adjudication of the issues raised in the matter. In a case like this, the petitioner cannot be expected to know the decisions of this Court in other writ petitions. However, the respondents are expected to know the law which has been laid down against them; more so when this Court has already held against the respondents on identical issues in several writ petitions prior hitherto.

8. Perusal of the counter affidavit would show that the same is blissfully silent and fails to disclose the previous decisions which not only have a bearing but completely decide the issues raised by the petitioner in the instant case. It cannot be contended that these decisions were not required to be placed before us. The decision dated 16th November, 2003 has been placed before us by the petitioner alongwith an application for early hearing.

The respondents have thus, not only failed to act in accordance with law but have also suppressed material facts from this Court.

9. Perusal of the judgment dated 16th November, 2009 in *Jayasankar M.N. v. UOI and Ors.* would show that this Court has already held that the responsibility to post a person lies on the respondents which is coupled with the duty imposed

upon them to release a person concerned so as to enable him to join the place where he is posted. In the case of Jayasankar M.N., he was denied HRA on the ground that he had been posted out of Delhi. However, the court noticed that though transferred, the petitioner was not relieved by the respondents from Delhi. Sh. Jayasankar had claimed HRA for the period for which, though posted out of Delhi, but had not been relieved. Similarly, in W.P.(C) No. 7391/2001 decided on 26th October, 2003, the court had held that a person who despite his posting out of Delhi, had remained attached in Delhi would entitle him to grant of HRA.

10. In the instant case, the respondents had posted the petitioner with the 104 Battalion at Aligarh. However, he was consciously attached for duties at the Headquarters, RAF, CRPF, Delhi where he admittedly had performed duties for the period between 1st October, 2001 till he was relieved on 13th April, 2005. It is, therefore, evident that the petitioner remain posted with 104 Battalion at Aligarh on paper on account of administrative exigencies but continued to perform his duties at the headquarters RAF.

11. We are informed that the respondents have paid the petitioner HRA for 90 days which according to the petitioner was for the period between 1st October, 2001 till 1st January, 2002. No reasonable or plausible justification as to why the petitioner was entitled to payment for this period and not for the remaining period for which it is claimed has been given. Certainly, the petitioner cannot be deprived of the payment of the HRA and the SDA to which he was found entitled even by the respondents for a part period.

12. For all the above reasons, this writ petition deserves to be allowed.

Accordingly, we direct the respondents to release to the petitioner within a period of three months from today, the HRA and the SDA to which he is entitled for the period after 1st January, 2002 till the date he was relieved by them from his attachment with the headquarters, RAF, CRPF, New Delhi.

13. In view of the fact that despite repeated judgment/orders of this Court since 1995 against them, the respondents have failed to follow any kind of discipline and have failed to abide by the correct legal position, valuable judicial time has been unnecessarily and unwarrantedly wasted. The petitioner has also been constrained to seek legal redressal by filing the present writ petition. Instead of reacting in the matter in accordance with law, the respondents did not apply the settled legal position. The respondents opted to pay no heed to the several representations submitted by the petitioner. In answer to the notice of the present writ petition, the respondents have filed a counter affidavit challenging the case of the petitioner despite the several judgments on the issue against them as noticed above. The contest by the respondents has also necessitated a wholly avoidable and unwarranted burden on the public exchequer. In view of the above, we hold that the petitioner shall be entitled to costs which are quantified at Rs. 10,000/-. This amount shall also be paid by the respondents within a

period of three months from today.

This writ petition is allowed in the above terms.