
(2009) 11 DEL CK 0244
In the Delhi High Court
Case No : Writ Petition (C) 7582 of 2009

Jayasankar M.N.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-11-2009

Acts Referred:

Citation : (2011) 178 DLT 291

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Jyoti Singh, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Rule DB.

2. Heard for disposal.

3. The issue raised by the writ petitioner is squarely covered, if not by the decision dated 15.5.1995 disposing of WP(C) No. 308/1994, at least the decision dated 26.10.2003 disposing of WP(C) No. 7391/2001.

4. The issue pertains to release of HRA and CCA to the petitioner.

5. Similar issue was raised in the two earlier writ petitions and the decision in both was in favour of the two writ petitioners.

6. Pertaining to the stand taken by the respondents that where the employee, on transfer-posting, is posted to a Unit outside Delhi, but remains attached to the Headquarters, no HRA or CCA is payable, in WP(C) No. 7391/2001 it was observed as under:

We find no substance in the stand taken by respondent No. 2 which represents his persistent though useless effort to resort to technicalities. It goes without saying that petitioner was attached to the Control Room of the Home Ministry under the orders of respondents and he continues to remain so attached till date.

His transfer on paper to Rampur along with his 8th Bn. may be dictated by administrative convenience but that does not detract from the fact that he was admittedly discharging his duties at Delhi due to his attachment there. Therefore, if he was entitled to allowance for serving in Delhi previously, he was equally entitled now. His transfer to Rampur on paper was of no consequence and would not deprive him of these allowances which flowed from his service at Delhi. The stand of R-2 that these allowances were attached to his headquarter which had shifted to Rampur is fallacious. We fail to appreciate that if his transfer could be ordered on paper why can't his headquarter be treated at Delhi temporarily on paper to rectify the anomalous position which is more of R-2's making and to set the record straight. R-2 enjoys the requisite power to do so and was also required by R-2 to act on this but still he appears to be guided by his own unrealistic approach.

7. Time to note the facts.

8. In March 1999, the petitioner was posted to the 94th Bn. but was attached to the Directorate EDP Cell at Delhi. In simple man's parlance, there was a hiatus between the place where the petitioner was posted as per paper and the place where he was required to actually work.

9. In June 2000, the petitioner was permanently attached and posted at the Directorate EDP Cell at Delhi.

10. Since attachment and the posting was at Delhi, the respondents had no problem in releasing HRA and CCA to the petitioner as per Rules applicable; needless to state, Delhi being a metropolitan city, the two allowances were released as per rates applicable.

11. In August 2003, the petitioner was issued a promotion-cum-posting order. He was promoted to the post of Inspector and was posted to the 126th Bn.

12. The place where the 126th Bn. was stationed is not known but immediately thereafter, after the promotion-cum-posting order was issued, on 28.8.2003, an office order was issued requiring the petitioner to continue to serve at the Directorate EDP Cell for a period of 6 months.

13. In terms of the said order, the petitioner was retained at Delhi and was made to work at the Directorate of EDP Cell.

14. The petitioner, under orders passed by the employer continued to remain at Delhi till 24.9.2007, when formal orders relieving him from Delhi were issued. But, HRA and CCA benefit was denied with effect from 10.9.2003.

15. Various representations made by the petitioner were rejected. We note that the first order rejecting the claim for release of CCA and HRA is dated 19.9.2005.

16. Declining relief, the respondent informed the petitioner as under:

The case for grant of HRA/CCA to the above personnel has been, examined in

consultation with Dy.F.A., and the competent authority has passed the following orders:

(i) Consensus emerged that rules cannot be violated if personnel do not go at their actual place of posting and remain attached at a particular place.

(ii) Paper transfer approach be dissuaded. Office personnel should physically move at the actual place of posting on their transfer orders. Thereafter, if the need be, they can be attached for short spells not exceeding 180 days as per SR 73 Rules.

(iii) Persons who want to be de attached be allowed to go back to their respective units/offices etc.

17. Suffice would it be to state that the insistence by the respondent, on the issue of denial of HRA and CCA on the premise that whosoever is posted out of Delhi is not entitled to the said allowances, is contingent upon the concomitant duty imposed upon the respondent to release the person concerned from the City of Delhi to enable him to join the place where the person concerned is posted.

18. Indeed, the respondent is conscious of the fact that paper posting orders are meaningless unless they are followed up by action, evidenced by sub-para (ii) extracted in para 16 above.

19. The reason given by the respondent to reject the claim by the petitioner, as noted in para 16 above, itself shows that the respondent is conscious of the fact that paper transfer approach has to be dissuaded and that the personnel should physically move to the place of posting on the transfer order being issued.

20. But, this is the obligation of the respondent. Needless to state, the employees of the respondent have no say in the transfer, posting and relieving orders.

21. Since the issue raised has been already settled against the respondent in the two writ petitions earlier filed, and as noted above, we allow the writ petition and issue a mandamus to the respondents to release, within 3 months, HRA and CCA to the petitioner for the period 10.9.2003 till 24.9.2003.

22. No costs.