
(2018) 05 GAU CK 0122
In the Gauhati High Court
Case No : WP(C) 2576 of 2016

Kandarpa Kanta Sarma

APPELLANT

Vs

Union Of India And 3 Ors

RESPONDENT

Date of Decision : 21-05-2018

Acts Referred:

Citation : (2018) 05 GAU CK 0122

Hon'ble Judges : AJIT SINGH, CJ; SUMAN SHYAM, J

Bench : Division Bench

Advocate : A Chetry

Final Decision : Allowed

Judgement

Suman Shyam, J.

1. Heard Mr. U.K. Nair, learned senior counsel assisted by Mr. M.P. Sharma, learned counsel appearing for the petitioner. We have also heard Dr.

B.N. Gogoi, learned Standing Counsel, NF Railway, appearing on behalf of the respondents.

2. By filing this writ petition, the petitioner has challenged the judgement and order dated 30/01/2015 passed by the learned Central Administrative

Tribunal (CAT), Guwahati Bench in Original Application No. 119/2003, rejecting the prayer made by the petitioner for payment of House Rent

Allowance (HRA) for the period from 25/09/2007 to 13/07/2007.

3. The facts of the case, briefly stated, are that the petitioner is an employee of the North East Frontier Railway. While serving as the Vigilance

Officer, Accounts, in the office of the Chief Vigilance Officer, N.F. Railway, Maligaon, the petitioner had occupied a Type II Quarter allotted by the

N.F.Railway authorities. Subsequently, the petitioner had constructed his own

residential house after obtaining due permission of the departmental authorities and had shifted there on 22/09/2007 by vacating his official accommodation.

The petitioner had claimed HRA with effect from 25.09.2007 i.e. the date from which the quarter vacated by him was allotted to another railway

official but the respondents had granted HRA to the petitioner with effect from 14/07/2009 on the ground that Type-IV quarters, which the petitioner

was entitled to, were available for occupation during the period from 22/09/2007 till 13/07/2009 and therefore, under the existing norms he was not

entitled to HRA during the that period. Aggrieved by the decision of the authorities permitting him HRA only with effect from 14/07/2009 instead of

25.09.2007 as claimed by the petitioner, he had approached the learned Central Administrative Tribunal, Guwahati Bench by filing OA No. 119/2013,

which was rejected by the impugned judgement and order dated 30/01/2015. Aggrieved thereby, the present petition has been filed.

4. Mr. Nair, learned senior counsel appearing for the petitioner submits that the officers drawing pay scale from Rs 5500/- to 9800/- at the relevant

point of time were entitled to Type IV Quarters and although the petitioner belonged to the said category, there was no Type IV quarter available at

that point of time as a result of which, he had to occupy a Type II Quarter. But with effect from 25.09.2007 not a single Type IV quarter, which was

fit for occupation, was lying vacant. As such, submits Mr. Nair, there was no valid ground for the authorities to deny him the HRA from 25.09.2007.

5. Referring to the RTI reply dated 23/03/2011 issued from the office of the General Manager (Con), Mr. Nair, further submits that it is the admitted

position of fact that as many as 15 similarly placed officers who were entitled to Type-IV quarters have been permitted to draw HRA from

25/09/2007 to 14/07/2009 and, therefore, by refusing to pay the HRA to the petitioner for the period from 25/09/2007 to 13/07/2009, the authorities

have meted out a discriminatory treatment to his client.

6. By referring to the pleadings contained in paragraph 4.11 of the Application filed before the Tribunal, Mr. Nair has further contended that the

specific statement of the petitioner to the effect that no quarter in the Type-IV category, which was fit for occupation by the officials, was available

during the period from 25/09/2007 to 14/07/2009 has not been denied by the

respondents in their written statement. Under the circumstances, submits

Mr. Nair, the impugned judgement and order dated 30/01/2015 passed by the learned Tribunal is vitiated by complete arbitrariness and non- application

of mind and, therefore, calls for interference by this Court.

7. Dr. B.N. Gogoi, learned Standing Counsel, NF Railway, on the other hand, has submitted that the claim of the petitioner for payment of HRA

during the period from 25/09/2007 to 14/07/2009 had been rejected since Type-IV quarters were available and under the existing norms, no officer can

be paid HRA during the period when vacant quarters are available.

8. We have considered the submissions made by the learned counsel for the parties and have also perused the materials on record.

9. There is no wrangle at the bar that the petitioner was entitled to a Type-IV quarter but it was only on account of non-availability of the same he

was allotted a lower grade quarter which is of Type-II category. There is also no dispute about the fact that the petitioner is receiving HRA as per his

entitlement since 14/07/2009. Therefore, the only issue that arises for adjudication in the present writ petition is as to whether the petitioner would be

entitled to claim HRA for the period from 25/09/2007 to 13/07/2009.

10. It appears from the record that the Chief Personal Officer, N.F Railways, had issued a circular on 07/06/1988 inter-alia laying down that railway

servants who are eligible for railway accommodation and do not submit application for such accommodation or who, after submitting such application

refuses to accept accommodation or surrender it, may be paid HRA if there is no prospect of any residential unit remaining vacant as a result of

refusal, surrender or non-application for such accommodation.

11. It further appears from the records that on 23/07/1999 another Notification was issued by the Railway Board dealing with the issue of payment of

HRA to the employees. Para 5 of the said notification would be relevant for this case and is, therefore, quoted here-in-below :-

â??5. In case of any point of time it transpires that some accommodation is likely to remain vacant/un-occupied due to lack of demand, it should be

made compulsory to submit applications for such types where there is surplus accommodation, and consequently, the employees entitled for such types

would not be eligible to draw House Rent Allowance.â??

12. In response to an application filed by the petitioner on 16/02/2011 under the RTI Act, 2005 making enquiry about the vacant Type-IV quarters, the

respondents had mentioned that a few type IV Bunglows had remained vacant during the relevant period. Relying upon the said reply of the

respondents, the learned Tribunal has recorded a finding that there was one Type IV quarter lying vacant during the period claimed by the petitioner

and hence, in view of the standing circular of the Railway Board, the petitioner cannot claim HRA from the period from 25/09/2007 to 13/07/2009.

13. It is apparent from the materials on record that the Type II quarter vacated by the petitioner on 22/09/2007 was allotted to one Abdul Naser with

effect from 25/09/2007 and that is the reason why the petitioner had claimed HRA with effect from 25/09/2007. However, since, the petitioner was

entitled to Type-IV quarter, hence, the standing Railway Board circular would obviously have to be applied with reference to the vacancy position of

Type IV quarters and not the Type II ones.

14. The pleaded case of the petitioner is that there was no Type IV quarter fit for occupation by any person that was lying vacant at the relevant point

of time and therefore, the respondent cannot deny him the HRA on such account. The pleadings of the petitioner as contained in paragraph 4.11 of the

Original Application has not been specifically denied by the respondents. There can hardly be any doubt about the fact that a quarter which is unfit for

occupation, even if remaining vacant, cannot be treated as a vacant quarter within the meaning of the relevant Railway Board circular so as to deny

the benefit of HRA to the petitioner if he is otherwise entitled to receive the same under the rules. Therefore, the entitlement of the petitioner to draw

HRA for the period in question would depend on whether there was any Type IV quarter lying vacant which was fit for occupation by an officer.

15. We have gone through the records produced by Dr. Gogoi and we find that the concerned authority of the N.F.Railway had certified on

13/07/2009 that the petitioner would be entitled to draw HRA with effect from 14/07/2009. There is, however, nothing in the record to indicate as to

the basis on which the decision to pay HRA to the petitioner from 14/07/2009 was taken by the authorities. The learned standing counsel for the

N.F. Railways has not been able to draw the attention of this court to any material which throws light on the actual vacancy position of the Type IV

quarters during the relevant period of time. Not only that, Dr. Gogoi has also failed to give any convincing answer to our query as to how those 15

officers referred to in the departmental communication dated 23/03/2011, enjoying identical pay scale as the petitioner, were permitted to draw HRA

during 25/09/2007 to 14/07/2009 if Type-IV quarters were in fact lying vacant during that period.

16. The respondents have not cited any other ground for denying the HRA to the petitioner during the period from 25/09/2007 to 13/07/2009. Having

regard to the fact that the petitioner has categorically pleaded in the OA that no Type-IV quarter fit for occupation by the officials was available

during the relevant period of time, in the absence of any contrary material available on record, we are unable to persuade ourselves to accept the

contention advanced by the departmental counsel that the reason for denying HRA to the petitioner from 25/09/2007 to 13/07/2009 is on account of

availability of vacant Type IV quarters. Rather, we are of the considered opinion that the claim of the writ petitioner for payment of HRA for the

period from 25/09/2007 till 13/07/2009 had been rejected by the departmental authorities in an arbitrary manner, without there being any valid basis for

doing so.

17. For the reasons stated herein above, we are of the un-hesitant opinion that the learned Tribunal was not correct in rejecting the Application filed by

the petitioner. The judgement and order dated 30/01/2015 passed by the learned Central Administrative Tribunal is, therefore, set aside. The writ

petition stands allowed. We, accordingly direct the respondents to disburse the amount of HRA payable to the writ petitioner for the period from

25/09/2007 to 13/07/2009, within 60 days from the date of receipt of a certified copy of this order. There would be no order as to costs. Return the

records.