

(2018) 05 DEL CK 0182

In the Delhi High Court

Case No : W.P.(C) 3551 OF 2016 and CM APPL. 20169 OF 2018

MANAV KUMAR PANDEY

APPELLANT

Vs

UNION OF INDIA & ORS

RESPONDENT

Date of Decision : 15-05-2018

Acts Referred:

Citation : (2018) 05 DEL CK 0182

Hon'ble Judges : HIMA KOHLI, PRATIBHA RANI

Bench : Division Bench

Advocate : Ankur Chhibber, hiva Lakshmi, Ruchir Ranjan Rai, Siddharth Singh, Vivek Singh

Final Decision : Disposed Of

Judgement

1. The petitioner has filed this petition praying inter alia for quashing the orders dated 11.08.2009 and 01.09.2009 passed by the respondents, declining to grant him HRA/Transport Allowance with effect from October, 2008 till the time he was attached with the Ministry of Home Affairs, New Delhi.

2. The entire issue raised in the present petition has been crystallized in the order-sheet dated 28.08.2017, which is extracted hereinbelow:-
The petitioner has remained posted in Delhi since 02.08.2000. However, the petitioner was given paper posting in different battalions which were located outside Delhi. The petitioner submits that he was paid House Rent Allowance from 02.08.2000 till October, 2008. The petitioner claims House Rent Allowance for the period October, 2008 till today. Whether the petitioner would be entitled to House Rent Allowance payable on actual posting at Delhi when he was attached to the Ministry of Home Affairs at Delhi though officially posted with battalions which are located outside Delhi has to be

decided in favour of the petitioner in view of the judgment of this Court on 16.11.2009 in WP(C) 7582/2009, Jayashankar M. N vs. Union of India.

The respondent has raised a contention that the petitioner did not apply for the House Rent Allowance in and as per the relevant rules. We had

occasion to deal with the aforesaid contention in another matter and it was recorded that there was ambiguity in this regard. The petitioner, like some

others, was actually posted and working in Delhi though he was, on paper, attached to battalions which were located and stationed outside Delhi. It is

not the case of the respondent that the petitioner was given an official accommodation at Delhi. The respondents in the counter-affidavit has stated

that the petitioner had not applied for the government accommodation in accordance with prescribed procedure. Counsel for the petitioner, however,

submits that the petitioner being informally attached to battalions which were outside Delhi could not have applied for the accommodation at Delhi for

this request would not be entertained. The petitioner was, in fact, given outliving permission for the same reason. The Director General of the

respondent would examine the aforesaid contention and would also state if any General Pool accommodation was available during this period in Delhi

and the same could have been allotted and given to the petitioner if he had applied for the said accommodation. Why and for what reason the

petitioner was granted outliving permission, and the effect thereof would be examined. The said affidavit would be filed within six weeks from today.

Re-list on 07.11.2017 with WP(C) 4783/2006, HC/GD Raghuvir Singh vs. Union of India and Others.â??

3. Pursuant to the aforesaid order, the respondents have filed an affidavit dated 14.05.2018, wherein it has been stated as below:-

4. It is submitted that the Ministry of Urban Development, Directorate of Estates, had vide Office Memorandum dated 17.02.2005 issued a

clarification regarding eligibility of the personnel posted to the Battalions of para-military forces at Delhi for General Pool of Accommodation.

5. That as per the O.M. dated 17.02.2005, it was stated that only those personnel who were on the strength of the Headquarters of the para-military

forces, including the Central Reserve Police Force, are eligible for General Pool residential accommodation. A true copy of the O.M. dated

17.02.2005 is annexed herewith and marked as Annexure R-1. It is thus respectfully submitted that in view of the above-mentioned position, the

petitioner could not have been allotted accommodation from the General Pool of Accommodation, even if there were vacancy.

6. It is submitted that with respect to the petitioner being given outliving permission with his family, the petitioner was given such permission, as the petitioner was posted out of Delhi with a different battalion but was attached the Ministry of Home Affairs. As explained hereinabove, since the Petitioner was not eligible for the General Pool of Accommodation, he was given the outliving permission from his concerned battalion, wherever he was posted on paper.â??

Â 4. Learned counsel for the respondents submits that the petitioner was attached with the Ministry of Home Affairs while posted in the Directorate General, CRPF and was granted permission for â??outlivingâ?? at that time. Thereafter, he was posted on attachment duty with the Ministry of Home Affairs and the outliving permission had continued even then. In October, 2008, the petitioner was transferred to the 822nd Battalion and relieved on paper strength but he remained attached with the Ministry of Home Affairs. Vide Office Order dated 06.12.2008, the Directorate General had granted the petitioner approval to stay at his family residence, in Delhi. Therefore, he was neither sanctioned HRA nor the Transport Allowance by the respondents.

5. Learned counsel for the respondents submits that in terms of the OM dated 27.11.1965, issued by the Ministry of Finance, Department of Expenditure, HRA is permissible to a government servant only if he has applied for Government accommodation in accordance with the prescribed procedure and since the petitioner had not applied for Government accommodation at the declared headquarters i.e. foster GC nor for GeneralÂ Pool accommodation, he could not be eligible for payment of HRA/Transport Allowance in accordance with the existing rules.

6. The circumstances in which the petitioner finds himself in, are identical to the fact situation in W.P.(C) 308/1994 decided by a Division Bench of this Court on 15.05.1995 and W.P.(C) 7391/2001 decided on 26.10.2003. The issue pertaining to release of HRA and CCA also came up for consideration before a Co-ordinate Bench in W.P.(C) 7582/2009 entitled Jayasankar M.N. vs. UOI and Ors. decided on 16.11.2009, wherein it was observed as below:-

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.

7. Subsequently, vide order dated 18.03.2013 passed in a batch of writ petitions, lead matter being W.P.(C) 1731/2013 entitled Insp.(M) Harvinder

Â Singh vs. UOI and Ors., the Court had observed as below:- "The petitioner in these proceedings seeks appropriate directions for release of

House Rent Allowance (HRA), Transport Allowance (TPT), and all other admissible benefits, in accordance with the terms and conditions of his

service. He relies upon various judgments and orders of the Court, including the order of another Division Bench of this Court in WP(C)

No.7582/2009 " Jayasankar M N V UOI and Ors. and other cases. Learned counsel for the respondents did not dispute that in accordance with the

terms and conditions governing the service of the petitioner's appointment, he is entitled to such amounts on the basis of Attachment Order being

served. This Court also notices that on earlier occasion, when these allowances were denied, the respondents used to routinely take the position that

the concerned officer was disentitled as he was released from Delhi. This Court, in WP(C) No.7582/2009 (decided on 16.11.2009), WP(C)

No.20700/2005 (decided on 17.5.2010) and in WP(C) No.8732/2010 (decided on 24.12.2010), in identical circumstances had directed that the

employees posted outside Delhi on attachment basis would be entitled to various benefits permissible in accordance with the terms and conditions,

identical directions are issued. It is clarified that the petitioner shall be paid such benefits, HRA, TPT and any other benefits as are admissible to

him in terms of the rules and regulations governing his services. The respondents are directed to comply with the terms of the order within two

weeks. The respondents are also directed to ensure and create a mechanism which would verify such claims made and pass appropriate orders in a

time bound manner preferably within eight weeks after receiving representations to avoid future litigation. Such mechanism shall also be created after

consideration, within eight weeks from today. Order dasti.

8. Counsel for the petitioner states that it was pursuant to the aforesaid order dated 18.03.2013 that the respondents had issued an OM dated

17.10.2013. The said OM framed the mechanism of disposing of claims during attachment/temporary transfer of officers other than their declared

headquarters, at the rates as admissible at the place where they were on temporary transfer/attachment. Learned counsel states that one of the

directions issued in the OM dated 17.10.2013 was that on declaration of temporary headquarter, the personnel on temporary transfer would be held

eligible for HRA and Transport Allowance and predicated on the aforesaid OM, the present petition has been filed.

9. Having regard to the averments made by the respondents in the affidavit dated 14.05.2018 filed in pursuance to the order dated 28.08.2017, we see

no reason to decline the relief to the petitioner. The petitioner cannot be made to bear the brunt of the paper posting issued by the respondents

when he remained attached with the Ministry of Home Affairs with effect from October, 2008 to 28.05.2015. It was the respondents' obligation

to have relieved the petitioner on his being posted outside, which did not happen. Admittedly, there was no General Pool Accommodation available for

the petitioner while in Delhi, as contemplated in OM dated 17.02.2005.

10. Accordingly, the present petition is allowed. The respondents are directed to

grant the benefits of HRA/Transport Allowance to the petitioner for the period between October, 2008 to May, 2015, in which duration he had remained attached with the Ministry of Home Affairs, New Delhi.

11. The petition is disposed of alongwith the pending application.