
(2003) 05 DEL CK 0055
In the Delhi High Court
Case No : CW. 6406 of 1998

Mr. Nirmal Kumar Verma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-05-2003

Acts Referred:

Citation : (2003) 105 DLT 430 : (2003) 69 DRJ 555 : (2004) 1 SLJ 98 : (2003) 6 SLR 791

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Party-in-Person, for the Appellant; Sanjay Jain Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Vijender Jain, J.—The petitioner was appointed as an Administrative Member of the Central Administrative Tribunal on 1.12.1992 for a period of five years or till the attainment of the age of 62 whichever was earlier. He was an officer of the Indian Postal Service after having been selected in All India Allied Services Examination in 1959. He was serving as Chief Post Master General, Maharashtra in the rank of Additional Secretary to the Government of India. At that stage he was offered the post of Member (Administrative) of the Central Administrative Tribunal. He was given an appointment at Patna Bench vide order dated 01.12.1992. The petitioner joined the Patna Bench on 20.01.1993. It is the case of the petitioner that he suffered ill health in Patna from the period March 1993 to September 1993 and had to take extra ordinary leave for 39 days without pay and allowances on medical grounds. On this score an amount of Rs. 1560/- which was paid to the petitioner on account of allowance for accommodation was ordered to be recovered from him by the Vice-Chairman of the Patna Bench after the petitioner was transferred from Patna to Bombay.

2. One of the prayer in the writ petition is with regard to the payment of the compensatory allowance for accommodation for 39 days extra ordinary leave on

medical ground while functioning as Member of the Central Administrative Tribunal, Patna Bench. The second prayer of the petitioner is with regard to the payment of the compensation in lieu of non-occupation of Government accommodation for his stay at Chandigarh while functioning as Member of the Central Administrative Tribunal, Chandigarh Bench. The third grievance of the petitioner is that when the petitioner was posted at Jodhpur he hired a private accommodation at the rate of Rs. 3000/- per month for the period 15.2.95 to 29.2.96, whereas, the respondent had reimbursed only at the rate of Rs. 1200/- per month for the said period. It is the case of the petitioner that the petitioner was entitled to be reimbursed at the rate of Rs. 3000/- per month as per the guidelines applicable to the case of the Members of the Central Administrative Tribunal.

3. In support of his contention petitioner who appeared in person had contended that from the bare reading of pay as defined in the Fundamental Rules 9(21) (a), HRA is not a part of the pay. The same is reproduced below:

"9.(21) (a) Pay means the amount drawn monthly by a government servant as-

(i) the pay, other than special pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and

(ii) overseas pay, special pay and personal pay; and

(iii) any other emoluments which may be specially classed as pay by the President."

4. It has been contended before me by the petitioner that pursuant to the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules 1985, Rule 6 (i) (iv) postulates that petitioner could avail extra ordinary leave without pay and allowances up to a maximum period of 180 days in one term of office. On the basis of the aforesaid Rule it was contended before me that the extra ordinary leave which was taken by the petitioner was for 39 days and the recovery of allowances part from the pay was contrary to rules. It was contended that HRA was not a part of pay and Therefore, the recovery made by the respondent was illegal and unjustified.

5. Petitioner has relied upon the regulation of allowances in different circumstances from the compilation of Swamy's FRSR Part V HRA & CCA to buttress his argument that he would be entitled to HRA allowance during the leave period of 39 days. The second limb of the argument of the petitioner was that when the petitioner was posted at Jodhpur from 15th February, 1995 to 29.2.1996, the registry at Jodhpur neither made any efforts to get a accommodation for the petitioner nor forwarded for approval the rent agreement as the petitioner hired private accommodation at the rate of Rs. 3000/- per

month. It was contended that it was incumbent upon the registry of Jodhpur Bench to obtain fair rent certificate or rent reasonability certificate to reimburse the petitioner up to Rs. 2350/- per month pending the further processing with the Government for payment @ Rs. 3,000/- per month. The petitioner had no control over the functioning of the registry of Jodhpur Bench on the administrative side and in spite of his best efforts the registry both at Jodhpur and the Principal Bench at Delhi sat over the proposal for more than 1-1/2 years. The petitioner in such circumstances was obliged to pay monthly rental @ Rs. 3000/- from his own pocket till 29.2.1996.

6. My attention has been drawn to the Rule 12 of the CAT (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman & Members) Rules, 1986 which is to the following effect:

"Accommodation. (1) Every person appointed to the Tribunal as a Chairman, a Vice-Chairman or a Member shall be entitled to the use of an official residence from the general pool accommodation of the type admissible to an officer of the rank of a Secretary to the Government of India stationed at Delhi on the payment of the license fee at the rates prescribed by the Central Government from time to time.

2. When a Chairman, a Vice-Chairman or a Member is not provided with or does not avail himself of the general pool accommodation referred to in sub-rule (1) he may be paid every month an allowance of any amount equal to fifteen per cent of his pay.

7. My attention has also been drawn to a letter dated 15.9.1995 written by Principal Bench, Central Administrative Tribunal, which is to the following effect:

" The Registrar/Dy.Registrars

All outlying Benches of CAT

Sub: Hiring of buildings for residential accommodation of Hon'ble Vice Chairman/ Members.

Sir,

I am directed to refer to our letters No. 7/5/92-JA dated 28th Oct. 1994 and of even number dated 20.2.1995 on the above subject and to say that it has been noticed that the Benches while sending their proposal for hiring private accommodation for their Vice Chairman/Members do not enclose Fair Rent Certificate from CPWD which causes delay in obtaining the approval of the Govt. The Deptt. Of Personnel & Training while granting sanction in one of the cases has observed that the proposal sent for Govt. approval after laps of sufficient time, that too without rent reasonability certificate from CPWD causes further delay in getting clearance from Min. of Finance etc.

2. It is, Therefore, requested that all such proposal which requires payment of higher rent than already agreed to by the Govt. i.e. Rs. 2500/- pm in the case of

a Vice Chairman and Rs. 2350/- in the case of a Member should be sent to this office well in advance Along with Fair Rent-cum-Non availability of General Pool Accommodation Certificate from CPWD so that prior approval of the Govt. may be obtained for payment of higher rent.

Yours faithfully

(RAGHUBIR SINGH)

DEPUTY REGISTRAR(JA)"

8. On the basis of the aforesaid letter it was contended before me that at the first instance the respondent ought to have reimbursed Rs. 2350/- p.m. to the petitioner for that the letter above made specific provision, and sent for further approval for remaining difference between Rs. 2350/- and 3000/- to Principal Bench at Delhi and if the same was not done, fault cannot be fastened with the petitioner and the petitioner cannot be penalised for the same. It was contended that the proposal was only sent by the registry of Jodhpur on 13.2.1996, whereas, petitioner had joined at Jodhpur on 15.2.95.

9. Petitioner invited the attention of this Court to a representation written by him which is at 66 of the paper book. The said representation was sent on December 21 1995, to the then Chairman of the Central Administrative Tribunal, Principal Bench, after nothing was moved from the registry at Jodhpur. My attention has also been drawn to the copy of D.O.P.T. Letter No. A-11013/27/92-AT dated 17th Oct., 1994, which is at page 110 of the paper book. The subject of the said communication is the recommendation of Internal Committee of CAT on accommodation for Vice-Chairman and Members. On the basis of the aforesaid letter it was contended before me that the responsibility of identifying and hiring a private accommodation for Vice-Chairman and Members was to be carried out by the Central Administrative Tribunal. It was also contended by the petitioner that it was the responsibility of the respondent to take appropriate steps for finding the accommodation and in case the accommodation was not available same was to be hired from private sources and it was an obligation on the part of the respondent to proceed with all the urgency and get the necessary approval and if the same was not done or the respondent was lethargic in its approach, the petitioner cannot be held responsible for the same. Therefore, it was urged that the petitioner be paid difference between Rs. 1200/- p.m. and Rs. 3000/- p.m. for the period 15.2.1995 to 29.2.1996. Lastly, the petitioner argued that he was transferred to Chandigarh in October, 1996 and he managed some accommodation which was available with him till February, 1997 and in that period the respondent paid 15% HRA in terms of the aforesaid rules to the petitioner. However, from 1.3.1997 till 19.1.1998, when the petitioner retired, he was not paid HRA @ 15% p.m. in terms of the rule.

10. On the other hand, Mr. Sanjay Jain counsel appearing for the respondent has contended that the petitioner cannot blow hot and cold in the same breath. Mr. Jain has contended that the petitioner at one stretch has contended that the

Government Rules, Fundamental Rules, CCS Rules Leave Rules shall be applicable, on the other hand, where it benefits him he relied upon the Rule of Central Administrative Tribunal Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules 1985. Mr. Jain has contended that as per the aforesaid rules, Rule 6(i)(iv) specifically deals with extra ordinary leave without pay and allowances. Counsel for the respondent has also placed reliance on the decision of Supreme Court in the case of Director, Central Plantation Crops Research Institute, Kesaragod & Ors. Vs. M.Purushothaman & Ors. Counsel for the respondent has contended that house rent allowance is not a part of pay but the same is covered by the definition of compensatory allowance. If house rent allowance is covered under the definition of compensatory allowance, it is an allowance and Therefore, when the payment is specifically barred under the rule, same cannot be given to the petitioner. Mr. Jain has also contended that the petitioner did not fulfill his part of the obligation as he has not taken any steps for taking prior approval of the Principal Bench, Central Administrative Tribunal, Delhi, with regard to hiring a house from a ceiling of more than Rs. 2350/- p.m. It was contended that first time the petitioner wrote to the Chairman of Central Administrative Tribunal only on December, 1995. It was also contended that the recommendation of the Internal Committee which was conveyed by D.O.P.T. Letter No. A-11013/27/92-AT dated 17th October, 1994, only envisaged the case of Vice-Chairman where suitable accommodation was not found within a carpet area of 1900 sq. ft and within Rs. 2500/- p.m. rent ceiling. Therefore, the petitioner was not entitled to a monthly rent of Rs. 3000/-. It was also contended that the petitioner in his representation to the Chairman had only requested for enhancement of the rent at the first instance to Rs. 2350/-. Repelling the contention of the petitioner with regard to payment of HRA @15% p.m. for the period 1.3.1997 to 19.1.1998, Mr. Jain has contended that petitioner was offered an accommodation which he did not take Therefore, the ratio of judgment of Supreme Court in Director, Central Plantation Crops Research Institute, Kesaragod (Supra) will come into play.

11. I have given my careful considerations to the arguments advanced by both the parties. With regard to the first prayer of the petitioner that he was entitled for house rent allowance when he was on extra ordinary leave for 39 days, I am in agreement with the contention of the respondent that in terms of the Rules, the extra ordinary leave was permissible as the petitioner did not have any other leave to his credit when he joined Central Administrative Tribunal from 20.1.1993 till September, 1993. But in view of the explicit provisions in Rule 6 (i) (iv), extra ordinary leave without pay and allowances would include the allowance of house rent also. In this regard, Supreme court in Director, Central Plantation Crops Research Institute, Kesaragod's case (Supra) while dealing with HRA, held that HRA was not part of the pay. Supreme Court held that HRA would be covered by the definition of compensatory allowance as occurring in Fundamental Rule 44 as it was a compensation in view of accommodation. If HRA is an allowance then the Rule 6 of the Rules specifically prohibits the grant of pay and allowance in

case of extra ordinary leave. Therefore, I find no substance in the argument of the petitioner that he is entitled for grant of HRA for 39 days.

12. Adverting to the submissions made before me by the parties with regard to payment of difference between Rs.1200/- p.m. and Rs. 3000/- p.m., reliance placed by the respondents on their circular dated 17th October, 1994 which was based on internal note of the CAT is misplaced. A harmonious reading of letter of D.O.P.T. Dated 17th October, 1994 and 15th September,1995 makes it manifestly clear that the provision of accommodation for Vice-Chairman and Members was to be carried out by the Central Administrative Tribunal. Although, in letter dated 17th October,1994, the ceiling with regard to the rent and the carpet area for both Vice-Chairman and Members of the CAT has been prescribed but in the event of suitable accommodation with the prescribed carpet area and rent ceiling in case of Vice-Chairman is not available, the proposal for hiring was to be sent by the concerned registry for prior approval. That was to be done not by the Vice-Chairman or by the Member but by the Principal Bench of the Central Administrative Tribunal. The intention of the Central Administrative Tribunal to apply the same principle as was applied in the case of Vice-Chairman is writ large from the letter dated 15th September, 1995. The said letter has been quoted above. Paragraph 2 of the said letter postulates eventuality of cases where payment of higher rents are required then what was stipulated in cases of both the Vice-Chairman and the Members of the Central Administrative Tribunal. Therefore, I do not find any force in the argument of the counsel for the respondent that petitioner was not entitled for reimbursement of Rs. 3000/- as monthly rent which was paid by the petitioner.

13. It was contended before me by the petitioner that letter dated 15th September, 1995 was not brought to his notice. Even otherwise, the Central Administrative Tribunal in its letter dated. 5.1.1995, which is at page no.107 of the paper book, in paragraph 1 stated that private accommodation for Vice-Chairman and Members was to be identified by the Bench in consultation with the Vice-Chairman/Member for whom it was to be hired. Therefore, the obligation was on the registry to forward the details at the earliest opportunity to the Principal Bench and to the respondent/Union of India for appropriate action and sanction. A person who is discharging judicial function cannot remain on road as sanction has not come or the department is lethargic in sending the same. If that kind of liberty is given to the respondent then it will not only adversely affect the quality of justice administered by the Administrative Tribunal but it will be a handle in the hand of the executive to interfere in day-to-day matters where hundred percent litigation is against the Government. I do not find any force in the argument of the counsel for the respondent that it was the petitioner who had not complied with certain requirements as envisaged by the respondent.

14. Coming to the last prayer with regard to payment of 15% house rent allowance per month in view of accommodation being available at Chandigarh, it

was contended before me by Mr. Jain that in Director, Central Plantation Crops Research Institute, Kesaragod's case (Supra) it was held by Supreme Court that it was obligatory on the part of the petitioner to take the accommodation offered by the respondent from the department pool and if the petitioner has not taken accommodation he will not be entitled to HRA. There is an obvious fallacy in the argument of counsel for the respondent. The Supreme Court in Director, Central Plantation Crops Research Institute, Kesaragod's case (Supra), on the basis of Office Memorandum dated. 27th November, 1965, which dealt with grant of house rent allowance on certain conditions has interpreted that in case such an accommodation is refused then the state Government servant would be disentitled to HRA. Supreme Court in All India Judges' Association and Others Vs. Union of India and Others, held:-

"It is not necessary to repeat here what has been stated in the judgment under review while dealing with the same contentions raised there. We cannot, however, help observing that the failure to realise the distinction between the judicial service and the other services is at the bottom of the hostility displayed by the review petitioners to the directions given in the judgment. The judicial service is not service in the sense of "employment". The Judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the council of ministers and the members of the legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. However, those who exercise the State power are the Ministers, the Legislators and the Judges, and not the Members of their staff who implement or assist in implementing their decisions. The council of ministers or the political executive is different from the secretarial staff or the administrative executive which carries out the decision of the political executive. Similarly, the Legislators are different from the legislative staff. So also the Judges from the judicial staff. The parity is between the political executive, the Legislators and the Judges and not between the Judges and the administrative executive. In some democracies like the USA, members of some State judiciaries are elected as much as the members of the legislature and the heads of the State. The Judges, at whatever level they may be, represent the State and its authority unlike the administrative executive or the members of the other services. The members of the other services, Therefore, cannot be placed on the part with the members of the judiciary, either constitutionally or functionally."

15. The petitioner was performing a judicial function as Member of the Central Administrative Tribunal. The petitioner was governed by rules framed u/s 10 of the Act. Rule 12 (2) of the CAT (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman & Members) Rules, 1986, which is quoted above makes it clear that if accommodation is not provided or a Vice-Chairman

or Member does not avail himself from the pool accommodation, he shall be entitled to allowance of any amount equal to 15 per cent of his pay. Even if I take into consideration that general pool accommodation was available which is disputed by the petitioner on the ground that the same was not according to his entitlement or status, I need not go into this controversy as the Rule makes it abundantly clear that even if the same is available and if a Vice-Chairman or member does not avail the accommodation, he shall be entitled to an allowance of amount equal to 15 per cent per month of his pay. There is no ambiguity in the Rule. It is well known principle of law that when the field is occupied by statute or rule then no other interpretation is necessary. Therefore, the reliance placed by the respondent on rules or notification cannot stand the test and the scrutiny of law in terms of specific provision made under Rule 12(2) of the Rules for grant of 15% amount per month.

16. Therefore, I hold that the petitioner succeeds with regard to his prayer for grant of house rent allowance @ Rs. 3000/- from the period 15.2.1995 to 29.2.1996. The respondents are directed to make payment of the difference of amount within a period of eight weeks. Similarly, petitioner is also entitled for payment of HRA @ 15 per cent per annum from 1.3.1997 to 19.1.1998. The same shall also be paid within a period of eight weeks. However, I find no force in the first submission of the petitioner with regard to payment of HRA for a period of 39 days and that prayer of the petitioner is rejected.

17. Parties to bear their own costs. If the amount is not paid within eight weeks, the petitioner shall be entitled to interest @ Rs. 8 per cent from the date of non-payment till payment is made.

18. Petition is partly allowed in terms of the aforesaid directions.

19. Rule is made absolute.