
(2018) 12 CAT CK 0023

In the Central Administrative Tribunal

Case No : Original Application No. 060, 01310 Of 2018

Rajendra Kumar Sto (Senior Technical Officer)

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 10-12-2018

Acts Referred:

Citation : (2018) 12 CAT CK 0023

Hon'ble Judges : Sanjeev Kaushik, J;P. Gopinath, J

Bench : Division Bench

Advocate : Shishpal Laler, T.S. Hundal, Ram Lal Gupta, R.K. Sharma

Final Decision : Disposed Off

Judgement

1. The applicant is a person who on the basis of eligibility of length of service of the post of STO held by him, became entitled for allotment of house in "D" category in Karnal.
2. The respondent organization had taken 200 acres of land from ICAR-CIRB at Hisar to manage a farm. To manage the farm, an office was established at Hisar and applicant was posted to Hisar. The applicant's contention is that he was eligible for "D" category house at the earlier station Karnal. He alleges that the Director of the respondent organization wanted to allot the "D" category house to one Dr. S.K. Singh who had joined the Karnal Institute in 1999, two years after the joining of the applicant.
3. Applicant submits that his transfer to Hisar was intra-institutional transfer and cannot be treated as a transfer out of Karnal. Hence, the quarter allotted to him is not liable to be cancelled. Applicant also refers to the instructions regarding retention of quarter till a quarter is allotted at a new place of posting. The new camp office has no house of its own to allot to the applicant at Hisar. However, some vacant houses at CIRB Hisar were available for allotment. Since a house of entitled category i.e. "D" category was not available, CIRB advised the applicant to apply for a lower category. Since a house of his eligible category was not

allotted, the applicant argues that the house allotted to him at earlier station Karnal be allowed to be retained by him. He also submits that since his transfer has been made to temporary camp office of IIWBR at Hisar, there was no reason to cancel the quarter allotted to him at Hisar. Applicant is in receipt of a communication that the license fee of his Karnal house has been doubled from this month.

4. The applicant made a request to allow him to retain quarter at Karnal on normal license fee. He was informed that his entitlement was restricted to two months on normal license fee and six months on double the license fee and after eight months, 40 times the normal license fee as damage rent w.e.f. 01.10.2018. The applicant submits that his transfer has been made to a camp office with no residential quarters and even the office was located in a rented building taken from CIRB Hisar.

5. The applicant's main argument is that there is no provision in the Rules to cancel appointment of a house merely because an official has been assigned duties in another city. Prayer of the applicant is for quashing Annexure A-6 charging him normal license fee for two months and double license fee for six months, Annexure A-8 which reiterates the license fee as stated in Annexure A-6, and Annexure A-11 wherein the period of double license fee having expired, the applicant would be charged double rent.

6. When the matter was filed, the Tribunal after hearing the applicant, had stayed Annexure A-11, impugned order dated 11.10.2018 and directed that the applicant would be admissible rent as per rules.

7. The respondents vide MA No. 1784/2018 filed an application for vacation of the above interim order. The applicant, when he joined the institute at Hisar, was allotted quarter No. III/11 in another unit of ICAR i.e. ICAR-CIRB, Hisar. The applicant turned down the allotment and the said allotment was cancelled on 18.10.2018. As per ICAR Allotment Rules, on transfer from one place to another, the employee has to apply within one month for accommodation at the new place of posting. The employee is allowed to retain residential quarter at the earlier place of posting for a maximum period of four months from the date of being relieved.

Clause 1 to 4 of the rules are reproduced below:-

"(1) Any employee on transfer from ICAR headquarters/any ICAR Institute or from one Institute to another Institute will be required to apply afresh for accommodation at his/her new place of posting within one month of his/her transfer/assumption in case of selection etc.

(2) Such employees shall be allowed to retain the residential quarters in their earlier place of posting for a maximum spell of four months from the date of relief irrespective of the fact whether he/she has been allotted residential accommodation or not in the new place of posting. In such cases, the normal

license fee shall be charged for the first two months or retention and subsequently, double the license fee shall be charged for the third and fourth month of retention.

(3) If no residential accommodation is provided in the new place of posting even after four months from the date of relief from the earlier place of posting, the employee shall be entitled to the admissible HRA as per rules at the new place of posting.

(4) In any case retention of residential accommodation in the earlier place of posting shall not be permitted beyond four months and if, not vacated by then, damage rent shall be realized from the fifth month of the date of relief."

The above rules, according to the respondents, are applicable in to the applicant.

8. The respondent organization was covered by the Ministry of Urban Development, Directorate of Estates Rules and Notification.

Hence, the rules regarding normal fee for two months and six months on double the license fee is applicable to all its employees and would also apply to the applicant"s accommodation allotted at Karnal.

9. Heard the learned counsel for the parties and have carefully perused the pleadings on record.

10. The applicant stood transferred from Karnal to Hisar and hence, his name was not retained in the eligibility list of officials posted at Karnal for allotment of official accommodation. The official was allowed to retain the quarter as per rules for two months on normal license fee and six months at double the license fee. The retention of Government accommodation at an earlier place of posting on payment of normal license fee is permissible only in the case of non family stations. Hisar, according to the respondents, is not a non family station and applicant can avail maximum eight months of stay in the official accommodation at earlier station of posting Karnal.

11. Applicant has supported his case by citing Annexure A-4, circular dated 27.02.2007, which respondents argue, has been modified by a subsequent circular dated 27.08.2012 which the applicant fails to disclose as the second circular does not favour the applicant. The respondents also argue that the interim relief was also sought by the applicant by misleading the Bench by citing the old circular of 27.02.2007. The comprehensive gazette notification of ICAR dated 16.06.2017 in part V Rule 40 (iii) relating to retention of accommodation applicable to the applicant states as follows:-

(iii)

Transfer to a place outside from the existing place, transfer to an ineligible office in the same station, on proceeding on foreign service in India, temporary transfer in India or transfer to a place outside India or deputation within India.

Two months on normal license fee plus six months on double license fee

The applicant is covered by clauses "transfer to a place outside from the existing place", of Rule 40(iii) cited above. Applicant's transfer has been made from Karnal to Hisar, Hisar being a place outside the existing place of posting i.e. Karnal. Applicant submits that he is temporarily transferred. Even if we accept this interpretation of the applicant, for "temporary transfer in India" under rule 40 (iii), he can retain the accommodation for two months on normal license fee and six months on double license fee. Even if it is taken that the applicant is "on deputation" from Karnal to Hisar, the same rule 40 (iii) allows stay by applicant for two months on normal license fee and six months on double license fee as per above Gazette Notification.

12. Hence, it is apparent that the applicant having been moved from Karnal to Hisar cannot retain the allotted house in Karnal beyond a period exceeding eight months. Indefinite stay at old station as prayed for by the applicant is not permissible. Applicant nowhere argues that his movement from Karnal to Hisar is not in the interest of service. That the respondents have taken up a Seed and Research Farm in Hisar and the applicant was sent to the said station to look after the farm is also not denied. An office has been established at Hisar to manage the farm and the applicant has been posted at the Hisar farm.

13. A priority list for allotment of quarters is maintained at each station and the allotment is made to persons posted at a particular station by the Quarter Allotment Committee. There appears to be also an arrangement among the various ICAR institutes that in a station where there is more than one institute and the said institute has excess vacant quarters i.e. excess in terms of the demand by the employees, such excess quarters can be allotted to the employees of their sister concerns.

14. The applicant on joining the Seed and Research Farm at Hisar on 03.10.2017, has claimed Transfer TA amounting to Rs. 53750/-. The applicant also claims TA/DA for official tours to Karnal. Hence, the official cannot claim that he was not transferred from Karnal to Hisar as he has claimed Transfer TA for the said movement from Karnal to Hisar. The applicant was also allotted a quarter by a sister unit of ICAR i.e. ICAR-CIRB at Hisar which was refused by him on the ground that it was one below his entitlement. Respondents produced letter Annexure R-1 dated 18.10.2018, cancellation of the allotment made to the applicant on his own request.

15. Whereas it would be ideal to be allotted an accommodation of preference and of eligible category, there is nothing in the Rules that on non-availability of eligible type allotment, one below type is not permissible. There are several occasions when Government servants are allotted house one or more below their entitlement on account of non-availability of the entitled accommodation. That the applicant has been transferred to a place outside the existing place of posting cannot also be denied as he has availed Transfer TA. He has also not made an

argument that he is challenging his transfer.

16. Applicant having claimed transfer TA, cannot deny the fact that he was transferred from Karnal to Hisar. Hence, any right for retaining the quarter at Hisar does not arise. The rule regarding drawl of HRA is admissible if no residential quarter is provided at the next place of posting after four months from the date of relieving from the earlier place of posting. Applicant was transferred vide order dated 21.09.2017. Whereas the exact date of joining is not readily made available, he was allotted a Type III house vide order dated 21.07.2018 which is well beyond this period of four months. Hence, applicant is eligible to draw HRA from the 5th month of arrival at Hisar. Since the applicant has not been allotted eligible type of accommodation, the respondents cannot deny him HRA. Since he is being allowed to draw HRA at Hisar, he will vacate the accommodation at Karnal within 60 days of date of issue of this order, as a special case and by paying double the license fee upto the date of vacation of accommodation at Hisar.

17. As per terms and conditions of the offer of job appointment made to the applicant, he is liable to be transferred anywhere in India to any ICAR unit. Hence, the retention of accommodation at Karnal while the applicant has been transferred to Hisar, is not viable as the applicant is liable to be posted anywhere in India to any ICAR unit. As per applicant's admission in OA, he was occupying a Type III accommodation in Hisar. In Hisar, he has requested for Type IV accommodation as per his entitlement, but the same was not allotted, as in the meantime applicant stands transferred. He refused the Type III allotment made to him at Hisar as it was not as per his entitlement. Since it is established that the applicant has been transferred from Karnal to Hisar, his request for retaining the house at normal license fee at Karnal does not stand. However, if the applicant is not allotted a quarter of his entitlement in Hisar, he be allowed to draw HRA as admissible.

18. OA stands disposed of with the above observations. There shall be no order as to costs.