
(2007) 09 DEL CK 0295
In the Delhi High Court
Case No : WP (C) No. 14250 of 2006

Sh. R.S. Misra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-09-2007

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2007) 6 ILR Delhi 148

Hon'ble Judges : Vipin Sanghi, J;A.K. Sikri, J

Bench : Division Bench

Advocate : M.K. Bharadwaj, for the Appellant; S. Rajappa, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—The dispute relates to grant of double HRA to the petitioner herein, who is a Teacher working as PGT (Chemistry) with the respondent-Kendriya Vidyalaya Sangathan (in short the "KVS"). The benefit of such double HRA is given to those employees of the KVS, who are outside the North-Eastern region and are posted to the said region. The relevant rule in this behalf is as under:

A Benefit of Double HRA

Sangathan employees posted to the specified States/Union Territories from outside the N.E. Region to another State/Union Territory of the N.E. Region, and who are keeping their families in rented houses or in their own houses at the last place of posting will be entitled to HRFA admissible to them at the old station, and also at the rates admissible at the new place of posting in case they live in hired private accommodation irrespective of whether they have claimed transfer T.A. for family or not subject to the condition that hired private accommodation or owned house at the last station of posting is put to bonafide use of the members of the family. These concessions are admissible also to those posted to Andaman and Nicobar Islands.

2. The petitioner is also posted to North-Eastern region. He claimed the benefit

of double HRA under the aforesaid provision, which was denied to him and under these circumstances, he filed OA No. 77/2006 before the Central Administrative Tribunal, Principal Bench, New Delhi u/s 19 of the Administrative Tribunal Act for grant of this benefit. Vide impugned orders dated 14.6.2006, the Tribunal has, however, rejected his prayer and that order is impugned by filing the present petition. The Tribunal has held that as per the said rule, benefit of double HRA is subject to the condition that hired private accommodation or own house of such an employee is "at the last station of posting". In the case of the petitioner, however, his last place of posting was Rajkot but the family was not at Rajkot from 30.10.2000 to 30.6.2003, the period during which the petitioner was posted in the NE region and, Therefore, he did not fulfil the condition for grant of the double HRA.

3. In the first blush this reasoning of the Tribunal appears to be in order. However, when we examine the facts of the present case and the rationale behind the grant of benefit of HRA to such employees, who are posted in the NE region, that would alter the course of action and would demonstrate that the approach of the learned Tribunal in the facts of this case is not appropriate.

4. The petitioner was serving as PGT (Chemistry) and was posted at KVS, Rajkot in the year 1988 when his services were terminated vide orders dated 11.2.1988. With the termination of his services he ceased to be the employee of the respondent. The petitioner challenged the said termination by filing WP(C) No. 3354/1989 in this Court. This writ petition was allowed vide orders dated 19.9.1994 and the Court directed the respondent to reinstate the petitioner with all consequential benefits. The respondent preferred LPA against that order, which was dismissed on 4.7.2000 holding that there was no legal infirmity in the judgment of the learned Single Judge. After the judgment of the Division Bench in the said LPA, the petitioner was reinstated in service. However, he was posted and transferred to Imphal on his reinstatement wherein he joined his duties on 30.10.2000.

5. The petitioner is a resident of Gurgaon and, Therefore, when his services were terminated at Rajkot, there was no reason or occasion for him to stay at Rajkot. After the termination of his services he had shifted to his residence at Gurgaon and filed writ petition in the High Court of Delhi challenging his termination. From the date of his termination in the year 1988 till October 2000 when orders for reinstatement were passed and he was transferred to Imphal, he remained at Gurgaon, namely, the place of his residence. In this backdrop, in the peculiar facts of this case denying benefit of double HRA to the petitioner on the ground that his family did not stay at Rajkot during the period he was in Imphal is clearly unjust and unwarranted. The rationale behind grant of double HRA to such employees, who are posted to North-Eastern region or at Andaman and Nicobar Islands, is that on their posting to these difficult stations, they are not expected to take their families along with them. That is the reason why posting to these places is called difficult posting, as it is not normally feasible to keep the

families along while working at such stations. In order to ensure that such employees join these difficult stations, the benefit of HRA is extended to their families as well, who are allowed to remain at the last station of posting. It is not in dispute that the petitioner otherwise fulfilled all the conditions for grant of double HRA. When we look into the spirit and rationale behind granting of this benefit, as explained above and also the circumstances in which the petitioner's family could not be expected to be at Rajkot, the petitioner was clearly entitled to the benefit of double HRA. It was the action of the respondent terminating the services of the petitioner way back in 1988 when he was posted at Rajkot that compelled the petitioner to leave that station and come to his home town. The said termination has been found to be illegal and that is why after the judgment of this Court the petitioner was reinstated in service. It would be, in these circumstances, too onerous a condition to compel the petitioner to leave his family at Rajkot and proceed to Imphal in order to get double HRA. We are, Therefore, of the opinion that the petitioner was entitled to double HRA for the aforesaid period, i.e. 30.10.2000 to 30.6.2003. We accordingly set aside the judgment of the Tribunal, allow the prayer made by the petitioner in the OA filed before the Tribunal and direct the respondents to give the benefit double HRA to the petitioner for that period.

The amount payable shall be worked out within 8 weeks and paid to the petitioner. If the needful is not done within the aforesaid period, the petitioner shall also be entitled to interest on this payment at the rate of 12% per annum.