

(2001) 08 DEL CK 0237

In the Delhi High Court

Case No : C.W. No. 1565 of 1999 and C.M. No's. 2426 of 1999 and 9419 of 2000

Shankar Lal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-08-2001

Acts Referred:

Citation : (2001) 08 DEL CK 0237

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Rekha Palli, for the Appellant; Jyoti Singh, for the Respondent

Judgement

Dr. Mukundakam Sharma, J.—This writ petition is filed by the petitioner praying for quashing of the order dated 27th January, 1999, passed by the respondent No. 3 whereby the House Rent Allowance being paid to the petitioner was directed to be stopped and the House Rent Allowance being paid to the petitioner was directed to be stopped and the House Rent Allowance already paid to the petitioner were directed to be recovered.

2. The petitioner on his transfer From GC, CRPF, New Delhi, to the North-Eastern Region reported in 27 Battalion on 8th August, 1997. By the aforesaid transfer, the petitioner was entitled to keep his family in New Delhi, the place of his posting and also draw House Rent Allowance which he was drawing in GC, CRPF, New Delhi. The aforesaid benefit was provided by the Central Government by issuing a notification being Finance O.M. dated 29th March, 1984. The said Memorandum issued by the Ministry of Finance states that the Central Government employees who were in occupation of hired private accommodation at the last station of posting before transfer to any of the States/Union Territories of the North Eastern Region and Andaman & Nicobar Islands would be allowed to draw House Rent Allowance admissible to them at that station. It was further provided that such Central Government Civilian employees may also be allowed to draw, in addition to the aforesaid House Rent Allowance at the rates admissible at the new place of posting in the aforesaid States/Union Territories in

case they live in hired private accommodation.

3. In the light of the aforesaid Office Memorandum the petitioner on his transfer to the North Eastern States submitted an application seeking for permission to keep his family at the old station and also for sanction of House Rent Allowance at his last place of posting. The said application was filed by the petitioner on 16th August, 1997. The respondents permitted the petitioner to keep his family at the old station and also draw House Rent Allowance at the rate of Rs. 450/- per month at this last place of posting. The House Rent Allowance was also sanctioned to the petitioner by order dated 30th August, 1997 with effect from 24th July, 1997 at the rate of Rs. 450/- per month and the said amount was drawn by the petitioner up to 31st January, 1999. However, a letter was written by the Additional D.I.G.P., SC, CRPF, Imphal, on 27th January, 1999 directing for stopping payment of House Rent Allowance to the petitioner from the month of February, 1999 on the ground that the petitioner has since been transferred to Jammu & Kashmir and joined there on 24th July, 1997. It was stated that in view of his transfer to J & K State the benefit under the aforesaid Office memorandum was no longer admissible to the petitioner and, Therefore, no future payment is to be made of the said House Rent Allowance to the petitioner with effect from 24th July, 1997 to 31st January, 1999 should be recovered from him. Pursuant to the aforesaid order, the impugned order was issued as against which the present writ petition is filed.

4. It is, thus, an admitted posting that the petitioner was transferred to the North-Eastern Region and he reported for duty in the 27th Battalion, CRPF, in the North-Eastern Region on 8th August, 1997 on his transfer from GC, CRPF, New Delhi. However, the said Battalion was shifted to Jammu & Kashmir some time in August, 1997. The issue, Therefore, that arises for my consideration is whether the petitioner shall be still entitled to get the benefit of the aforesaid House Rent Allowance of an amount of Rs. 450/- per month for retaining the quarter at Delhi upon his posting to Jammu & Kashmir which benefit was available to a person on transfer to North-Eastern Region and Andaman & Nicobar Island.

5. There is no dispute to the position that an employee like the petitioner who was in occupation of hired private accommodation at the last station of posting before transfer to any of the North-Eastern Region and Andaman & Nicobar Islands would be allowed to draw House Rent Allowance admissible to them at that station. Such Central Government Civilian employees would also be allowed to draw in addition to the aforesaid House Rent Allowance at the rates admissible at the new place of posting in the aforesaid Station/Union Territories in case they live in hired private accommodation. The aforesaid position is clear from a bare reading of the Office Memorandum dated 29th March, 1984 on the basis of which the respondents allowed the petitioner the benefit of the same upon his transfer to the North-Eastern Region. However, upon his subsequent transfer and posting to Jammu & Kashmir whether the petitioner would continue to enjoy the same benefit or not, that is the moot question which arises for consideration.

6. In support of the contentions in the writ petition, counsel appearing for the petitioner relies upon the contents of the Office Memorandum dated 15th September, 1998 which is annexed as "Annexure P-2" to the writ petition. Relying on the aforesaid Office Memorandum, counsel submitted that retention of Central pool accommodation at the last place of posting by Central Civil Service officers upon their posting to Jammu & Kashmir was permitted by the aforesaid notification. She also stated that on posting to Jammu & Kashmir, the petitioner should have been treated at par with that of posting to North-Eastern Region and, Therefore, the petitioner should have been given the benefit in terms of the Office Memorandum dated 29th March, 1984 read with the Memorandum dated 15th September, 1998.

7. In view of the aforesaid contention, I have also carefully perused the contents of the Office Memorandum dated 15th September, 1998. The same relates to retention of General pool accommodation at the last place of posting by Central Civil Service officers who are posted in Jammu & Kashmir. Therefore, what is stated in the said Memorandum is that upon posting to Jammu & Kashmir, if there be any General pool accommodation provided to the petitioner at his last place of posting, the same could be retained by the employee after he is posted to Jammu & Kashmir. That, however, does not permit the petitioner to draw or to get benefit of the House Rent Allowance at his earlier place of posting. The petitioner would have been entitled for the same if he would have continued to serve in the North-Eastern Region. So long the petitioner was there, he had availed the said benefit of the House Rent Allowance but upon his transfer to Jammu & Kashmir, the said benefit shall have to be forfeited as there is no specific provision in the Rules and/or in the guidelines to continue to enjoy the said benefit even when he is posted to Jammu & Kashmir. In other words when a person is posted to Jammu & Kashmir, he is not entitled to the benefit of House Rent Allowance as that of a person who is posted to the North-Eastern Region and, Therefore, from the date the petitioner was transferred to Jammu & Kashmir and posted there, he shall not be entitled to claim any House Rent Allowance in the same manner in which he had drawn while posted in the North-Eastern Region. No provision could be pointed by the counsel for the petitioner which entitles the petitioner to enjoy the same benefit even when posted to Jammu & Kashmir. So far the Office Memorandum dated 15th September, 1998, is concerned, the same is applicable only when the transfer and posting is to any place mentioned therein. Such benefit is not extended to a transfer to J & K State. Therefore, I am of the considered opinion that, the petitioner is not entitled to receive the House Rent Allowance after he was transferred and joined Jammu & Kashmir.

8. It was also contended by the counsel for the petitioner that since the petitioner has already received the benefit of the House Rent Allowance for some part of the period, the same may not be directed to be recovered from the petitioner as the petitioner received the said allowance for no fault of his. In support of the said contention, the counsel relied upon the decision of the

Supreme Court in Shyam Babu Verma and Ors. v. Union of India and Ors. ; reported in (1994) 27 A T C 121. I have perused the ratio of the aforesaid judgment. In the said judgment, it was held that although the petitioners therein were entitled only to the lower scale of pay with effect from 1st January, 1973 and only after period of 10 years they became entitled to the higher pay scale but as they had received the benefit of higher scale since 1973 due to no fault of theirs and that scale was reduced in the year 1984 with effect from 1st January, 1973, it would only be just and proper not to recover any excess amount which had already been paid to the petitioners.

9. The amount which was sought to be recovered by the respondents from the petitioner for the period from 24th July, 1997 to 31st January, 1999, comes to approximately Rs. 8,000/-. The said amount was paid to the petitioner without raising any objection and the petitioner also received the same being unaware of the legal position. Therefore, the petitioner was in no way responsible for over-payment made to him. The petitioner is not entitled to the aforesaid amount but still for the fact that the petitioner has received the said benefit without being in fault and as he was posted to hard stations like North-Eastern Region and Jammu & Kashmir, I consider it to be a fit case to exercise my discretion as was done in the case of Shyam Babu Verma and others (supra).

10. Accordingly, I hold that the petitioner is not entitled to receive house rent allowance at Rs. 450/- per month after his transfer and posting to Jammu & Kashmir. However, in view of peculiar facts and circumstances, I order that the amount already drawn by him towards such allowance shall not be recovered from him. This order shall also not be treated as a precedence in any other case. The writ petition stands disposed of in terms of the aforesaid order. The interim order passed on 6th August, 1999, is made absolute. Pending applications stand disposed of accordingly.