

(2022) 06 CAT CK 0019
In the Central Administrative Tribunal
Case No : Original Application No. 180, 00232 Of 2020

Sheeba B

APPELLANT

Vs

Chief Postmaster General, Thiruvananthapuram ? 695 030 &
Others

RESPONDENT

Date of Decision : 06-06-2022

Acts Referred:

Constitution Of India, 1949 — Article 21

Citation : (2022) 06 CAT CK 0019

Hon'ble Judges : K.V. Eapen, Member A

Bench : Single Bench

Advocate : U. Balagangadharan, S.R.K. Prathap

Final Decision : Allowed

Judgement

K.V. Eapen, Member A

1. The applicant is a Postal Assistant who is officiating as the Post Master of the Payangadi Mukhya Dak Ghar (MDG) in Kannur Division. She is aggrieved by non payment of House Rent Allowances (HRA), along with recovery of HRA which had been disbursed to her earlier for a few months. The ground taken by the respondents is that she has not occupied the earmarked quarters attached to the Payangadi MDG. The O.A has been filed seeking the following reliefs :

(i) Direct the third respondent to draw and disburse House Rent Allowances to the applicant for the period from 15.09.2017 to 31.08.2018.

(ii) Direct the third respondent to stop recovery of House Rent Allowances paid for the period from 01.06.2019 to 31.01.2020 from the pay and allowances of the applicant.

(iii) Direct the third respondent to continue to pay House Rent Allowances to the applicant from February 2020 onwards without break.

(iv) Direct the third respondent to exempt the applicant from occupying

dilapidated quarters attached to the Payangadi MDG with retrospective effect from 15.09.2017 itself.

(v) Declare that the applicant is entitled to be paid House Rent Allowances from the date of her joining at Payangadi and she is not liable to occupy the dilapidated quarters attached to MDG Payangadi during her incumbency there; and

(vi) Such other reliefs that the Hon'ble Tribunal deem fit in the facts and circumstances of the case.

2. The brief facts of the case are as follows:

The applicant while working as Sub Post Master (SPM) at Karivellur under the Kannur Division, was transferred to Payangadi MDG as Post Master (Officiating) in place of one Smt.Sindhu Muraleedharan, Postal Assistant at Payangadi MDG. The applicant submits that the said Smt.Sindhu Muraleedharan was drawing HRA even though she was not occupying the attached quarter at Payangadi MDG. The main reason given by the applicant for not occupying the attached quarter is that it is highly dilapidated and inhospitable. She submits that the incumbents who were working as Post Master (Officiating) immediately prior to her at Payangadi were also not occupying the quarters. They were however getting the HRA. Even before joining the post of Post Master (Officiating) Payangadi, she had sent a letter to the 3rd respondent (Superintendent of Posts, Kannur) asking for permission to reside at Karivellur itself, as the quarters attached to Payangadi MDG were dilapidated and not fit for occupation. This was sent immediately after the transfer order at Annexure A-1 dated 31.05.2017 had been issued. It was submitted in the representation that the rooms in the quarters was filled with bat excreta and there was no proper lighting and switch boards were without insulation. It was also submitted in the representation that the quarters had not been occupied for many years and there was no compound wall. The outside well was contaminated and hence drinking water had to be collected from elsewhere. She prayed for exemption from occupying the quarters on these grounds along with permission to reside at Karivellur. However, later she joined as Post Master (Officiating) at Payangadi on 15.09.2017. She then submitted another representation (at Annexure A-3) asking that she be posted only as Postal Assistant in Payangadi, rather than as Post Master (Officiating) and as she wish to remain at Karivellur to take care of her baby, as well as her husband's family, who were located there. In addition, she submitted another representation (at Annexure A-4) stating that the quarter was still unfit for occupation and, hence, HRA should be drawn and paid to her by exempting her from occupying the same until all the problems of the quarter were resolved. After this, it appears that one Shri.Chериан was posted as Postal Assistant, Payangadi in a vacant post of Postal Assistant and joined there on 01.09.2018. As he was 'inter-se' senior to the applicant, he was designated as Post Master (Officiating) in place of her. During the period that Shri.Chериан was incharge of the Post Office, from 01.09.2018 till his retirement on 31.05.2019, it appears that the applicant was

sanctioned and paid HRA. This apparently continued even after the retirement of Shri.Chериан, up to 31.01.2020. However, from 01.02.2020 no HRA was paid. Meanwhile, the Postal Authorities initiated steps in order to recover the HRA after 31.05.2019 paid to her up to 31.01.2020. She made a representation against this (as at Annexure A-6) but it appears from the Annexure A-8 copy of the Pay Slip that recovery was initiated against the HRA paid. At this stage the applicant came before the Tribunal and the matter was heard on 18.06.2020. The Tribunal directed the respondents on that date not to effect recovery of the HRA till the next date of hearing. This order has been continued and extended from then onwards.

3. It is the applicant's contention that after inspection even the Postal Authorities had themselves had found the quarter not fit for occupation and hence she should not be forced to occupy the same and be paid the HRA. In this connection, she has attached two reports by the Inspector of Posts at Annexure A-10 and Annexure A-9. In the Annexure A-9 report dated 27.04.2020, the Inspector of Posts in a letter to the Superintendent of Post Offices, Kannur (3rd respondent) has written that some electrical/plumbing repairs works had been done there during May 2018 and it is found, prima facie, that the electrical fixtures are in place and the electricity was available. However, there was an issue with a herd of bats inside the quarter which makes it impossible to be occupied. It was required to be provided with a metallic mesh to contain the issue. Further, the water from the well could be used if it was properly cleaned for both the office and the quarter. However, it was also clearly stated in the same letter that the quarters could be habitable only after carrying out the repainting and cleaning work. It was certified that as on the date of visit the quarter was uninhabitable and temporary dequarterization was required until all these suggestions are met. Similarly, the applicant has provided another report (copy at Annexure A-10) which was submitted by the Inspector of Posts earlier on 19.02.2018. It is stated therein that the quarter would be habitable only after carrying electrical, plumbing and repainting work. It has also been recorded that the quarter is uninhabitable and temporary dequarterization is required. It is therefore, submitted by the applicant that these two reports taken together, prima facie show that the quarter had been found to be uninhabitable and that temporary dequarterization/repair was recommended by the authorities. It has also been submitted by the applicant from information provided under RTI petition that the said quarter had been last used in the year 2016, and not after that. This can be seen by a copy of the reply produced at Annexure A-12. She submits that though she was appointed as Post Master (Officiating) Payangadi, she was neither paid any allowance for the additional responsibility as Post Master (Officiating) nor was HRA being paid on the ground that there is a quarter available. Her requests for dequarterization have not been considered inspite of the clear reports of the Inspector of Posts that the quarter was not habitable and needed temporary dequarterization/repair. She submits that the quarter has not been occupied by her predecessors either since it was not fit for human

habitation. Thus, it is submitted that the respondents should not insist that the quarter be occupied until all the repair work is done. Her contention is that during that period she cannot be denied her entitled HRA. At the end of the day, she submits that she is only a Postal Assistant and despite the existence of several senior persons she was given the charge of Post Master (Officiating) at the Payangadi MDG. On top of all these issues even the money paid to her as HRA is also being recovered, which has since been stayed by the Tribunal as indicated earlier.

4. In her prayer for relief by allowing the HRA, the applicant has relied on a previous order of this Tribunal where it submitted that identical issues were considered. It is submitted that in O.A.No.576/2005, the Tribunal had held that if the non-occupation of the accommodation was on account of an inevitable situation, then it is to be presumed that accommodation was deemed to have not been offered; accordingly, directions were issued to disburse HRA to the applicant who refused to occupy quarter due to its dilapidated state. This order dated 19.07.2006 has been produced at Annexure A-13. It is submitted that a similar order on the same ground has been passed in O.A.No.78/2012 on 26.07.2012 wherein the Tribunal permitted the applicant to draw HRA despite the allotment of quarter. As noted earlier the main ground of the applicant in this Original Application is relating to the condition of the quarter. The applicant submits that the water in the well is contaminated and there is undergrowth of plants and shrubs around the quarter. It is submitted that the quarter is totally inhospitable unless exhaustive repairs are undertaken. There is also a total lack of security. The fact that she had a very small child at the time of her transfer and it would have been quite difficult to occupy the quarter in that state then has also not been taken into consideration. Further, the fact that even her predecessors did not occupy the quarter establishes that it is not fit for human habitation. Thus she has prayed for the reliefs in the O.A.

5. The respondents filed a reply statement wherein they submit that the applicant had been transferred to Payangadi MDG on her own request. They submit that the officials who are occupying Government quarter or who are allotted a quarter but not occupying the same are not entitled to HRA. The Payangadi MDG is a Government quarter attached Post Office. Hence, as per the norms, the Post Master Incharge of the Post Office has to reside in the same. Since there was no Post Master in the LSG cadre and no Post Master Grade-I had joined the post, the senior most person available there was given the charge of the Post Office. Thus, the applicant being the senior most Official there was given the charge of the Post Office. The applicant has submitted that another Postal Assistant, who was posted in the same Post Office, Smt.Sindhu Muraleedharan, was given the HRA. However, the respondents submit that this is a misleading statement, as Smt.Sindhu Muraleedharan was posted as Postal Assistant at Payangadi during the period when one Smt.Prasanna.T.V was working as Post Master (Officiating), Payangadi. Hence Smt.Sindhu Muraleedharan was entitled and drew the HRA. Further, the respondents submit

that as per Supplementary Rule, S.R 312 (1) the incumbent of a post to which a residence has been allotted under Rule 311 shall be considered to be in occupation of the residence during the period of his/her incumbency, unless the allotment is changed or suspended under these Rules. In addition, the Government of India's Order (2) under S.R 316-A which deals with "Earmarked (post attached) Residence" says that "as per the existing instruction, the allotment of earmarked accommodation subsist only during the period of incumbency and immediately on change of incumbency the successor of the incumbent becomes the allottee in question." Thus, it is submitted by the respondents that as per these Supplementary Rules the applicant being the successor of Smt.Prasanna.T.V automatically became the occupier of the said Government quarter. It is submitted that the Post Master Incharge of the Post Office in such Post Offices is mandated to reside in the quarter during incumbency.

6. It is submitted that the quarters were inhabited by predecessors of the Applicant in charge of the MDG up to 30.09.2016. After assuming the charge as Post Master (incharge), Payangadi the applicant had sent a representation to the 3rd respondent, Superintendent of Post Offices, Kannur regarding the dilapidated condition of the quarter and had requested to repair the same. In the same representation she had asked that she may be permitted to reside at Karivellur and that Payangadi Post Office may be treated as a "Non Quarter" office. The respondents submit that the quarter was repaired and made habitable. On receipt of the representation, the 3rd respondent, Superintendent of Post Offices, Kannur deputed the Inspector of Posts, Payyannur Sub Division to visit the Post Office and report further repairs to be carried out there. It is submitted that the electric and plumbing work were done at Payangadi MDG and civil works by the civil wing. Thus, it is submitted that even after making sufficient repairs in the quarter the applicant is making wrong and unnecessary allegations to mislead this Tribunal. It is their contention that the fact that applicant submitted the representation at Annexure A-2 dated 10.09.2017 even before joining as Post Master (Officiating), Payangadi makes it evident that she was not ready to move to quarter due to personal reasons inspite of the fact that she had been transferred there on her own request. After being transferred as per her own request, thereafter pointing out her inconvenience in not occupying the quarters, is against service conditions, as she knew that the Payangadi MDG was a quarter attached Post Office. Under Rule 37 of Postal Manual Volume VI – Part-1, HRA shall not be admissible to those Government servants who occupy the accommodation provided by Government or to those to whom accommodation has been offered by Government but who have refused it. It is their contention that wherever such quarters attached Post Office are provided, the Post Master is bound to occupy the quarters and stay in the premises as per Rule 37. The Payangadi MDG is housed in a Building owned by the Postal Department and repair/renovation is done through the Civil Wing.

7. It is submitted by the respondents that it is to be also noted that

Shri.Chერიyan, who was posted as Sub Postmaster, had joined duty on 01.09.2018 at Payangadi MDG. As he was the senior most Postal Assistant, the post of Post Master, Payangadi MDG was officiated by him. He was not paid any HRA till his retirement on 31.05.2019 nor did he claim the same. In the case of the applicant, it is submitted that she is residing at her husband's house and thus not occupying the quarter attached to the post. During the tenure of Shri.K.J.Chერიyan at Payangadi the applicant was paid HRA. After the retirement of Shri.K.J.Chერიyan, since the applicant became the Post Master (officiating), HRA cannot be paid to her. Being the senior most among the officials working as Postal Assistant in that Post Office, she has been given the charge of the Post Master in accordance with the Department of Posts instructions produced at Annexure R-1. Thus, it is submitted by the respondent that, as the quarter was repaired on her request, they have not exempted the applicant from occupying the same. The respondents are governed by the rules/laws which are framed from time to time and there is no rule prevailing to give exemption to the applicant, as the post held by her is a quarter-attached post. It is reiterated that the quarter was repaired at her complaint and it is evident from the report of the Inspector of Posts at Annexure A-9 dated 27.04.2020 that the repair works had been completed during 2018 during the tenure of Shri.K.J.Chერიyan. Annexure A-9 report has clearly brought out that electrical fixtures were in place and electricity, which is the primary essential requirement, is available. It also brings out that by providing a metallic mesh the ingress and egress of bats can be stopped. It is also mentioned in the report that the well in the premises has been properly cleaned and water can be used for both office and quarters. Thus, it is the submission of the respondents that the Annexure A-9 clearly proves that the quarters was habitable. Even the earlier report at Annexure A-10 dated 19.02.2018, the Inspector of Posts had stated that the building was habitable provided the cleaning and repainting work was carried out. These were just minor works and cannot be treated as a reason for non occupancy of quarters.

8. It is submitted that the predecessor of the applicant, Smt.Prasanna.T.V had used the quarter. The quarter only required some minor work to be done and the non occupation of the same was purely due to personal reasons of the applicant. It is submitted that these reasons are clear in the representation submitted on 05.10.2017 by the applicant at Annexure A-3. The representation shows that the applicant lives with her husband's family at Karivellur and is having a two year old child who needs constant care. Further, her elder child is studying in primary class and the in-laws are too aged requiring personal attention. Thus, it is submitted that the applicant is basically staying at Karivellur in order to look after her children and the parents of her husband. It is also submitted that the husband is working as a HSST at Tagore Higher Secondary School, Vellara and cannot stay with the applicant. All these clearly prove that the applicant is not staying in the quarter purely due to personal reasons. It is again reiterated that the service regulations of the applicant are regulated by the FRs & SRs. The SR 312 (1) makes it clear that the incumbent of a post of which a residence has

been allotted under Rule 311 shall be considered to be in occupation of the residence during the period of his incumbency unless the allotment is changed or suspended under the Rules. Finally, it is submitted by the respondents that the orders of the Tribunal in Annexure A-13 and Annexure A-14 are entirely different from the facts and circumstances of this case as in those referred cases the condition of the quarter was not at all habitable, whereas in this case, the quarter was repaired and made habitable but there was non-occupation by the applicant. It is therefore, submitted that a Central Government employee to whom a quarter is allotted or where the quarter is attached with the post held by the incumbent is not entitled for HRA and any unwarranted released amount has to be recovered. Thus, recovery was started from her salary and the respondents cannot go against the Rule 37(2) of the Postal Manual.

9. I have heard both sides and also carefully considered the above contentions. On a reading of the letters of the Inspector of Posts, unlike what has been stated by the respondents, it does appear in the letters at Annexure A-10 dated 19.02.2018 and at Annexure A-9 dated 27.04.2020 that at the time when the quarter was inspected, the said Inspector had found that there was still work to be done to make the quarter habitable. In the letter at Annexure A-10 dated 19.02.2018 the Inspector of Posts has clearly written that the quarter will be habitable only after carrying the electrical, plumbing and painting work and that the quarter was uninhabitable and temporary dequarterization was required. Even if the respondents' contention is taken into consideration that all these work was completed and quarter was made habitable. with only some minor works left, the question then arises how again later, on 27.04.2020, the Inspector of Posts Payyannur in the letter at Annexure A-9 continued to find that on the date of his visit, the quarter was still uninhabitable and that temporary dequarterization was required until the suggestions made by him in the letter were positively carried out. It is again not clear, after this letter at Annexure A-9 was written, whether those suggestions were carried out and the quarters made habitable. There are no indications in the reply or elsewhere to show that this was done. In such given facts and circumstances, there appears to be no alternative but to accept the contention that the quarter was from the period of the applicant's joining and continuing to the present still quite dilapidated and uninhabitable. Learned counsel for the applicant Shri.U.Balagangadharan has also produced some photographs in order to prove this point. While I cannot rely on the photographs by itself, all the above facts and circumstances that are available do not contradict the applicant's contentions but rather establish, to some extent, the position taken that the quarter was not in a position to be occupied. It could well be that this situation has enabled the applicant to stay in her husband's family home, which is more convenient for her to look after the aged parents of her husband as well as look after her children. However, that fact by itself does not make the contentions that the quarter was dilapidated and uninhabitable in any way false or open to question. Indications like the report of the Inspector of Posts prove that this indeed was the case and it was incumbent

upon the respondents, to ensure that the quarters was made habitable and give written directions to the applicant to occupy the same if after that she was not occupying the same.

10. Learned counsel for the respondents, Shri.S.R.K.Prathap has mainly drawn attention to the Supplementary Rule No.312 and the directions under Government of India's Order No.2 under S.R 316-A which make it incumbent for authorities to consider that the applicant was in possession of the quarter. However, the respondents have not provided that the quarter was indeed inhabitable. The letters of the Inspector of Posts outlined earlier point in the opposite direction that it required dequarterization. Similar recommendations were made at two different points of time by the Inspector of Posts in 2018 as well as in 2020, which appear to prove that adequate repair work had been completed therein for making it habitable. Thus, even after acknowledging that the situation perhaps helped the applicant stay in the Karivellur in her husband's home, it is accepted that though a quarter was provided, it was not possible to occupy the same and the same had to be dequarterized which was not done. The applicant to that extent, could be considered for HRA claimed during the period. This Tribunal, in the matter of V.K.Vidyadharan vs. The Senior Superintendent of Post Offices, Kottayam & Ors., in O.A.No.576/2005 delivered on 19.07.2006, produced at Annexure A13, seems to have dealt with a similar situation pertaining also to the Department of Posts. The points made in paragraphs 9 and 10 appear to be relevant and are reproduced below :

"9. The fact that there is a free quarters is not disputed. But what is questioned is that the said house, admittedly, having not been under occupation since 1997 had, according to the applicant, been in such a condition that it was not fit for habitation at all. This resulted in his immediately approaching the authorities pointing out innumerable shortcomings and repairs as early as in June 2001 ie., within a few days of his taking over charge as Sub Post Master. It was only by March, 2002 that certain repairs were carried out. The applicant during the period from May 2001 till the date of retirement January 2003 could not occupy the accommodation and in his communication dated 19.03.2004 (Annexure A-5) he had stated that in view of the condition of the free quarters he had resided in another rented house. The question that falls for consideration is whether availability of a house unfit for habitation could be considered as an accommodation offered to the applicant. The purpose of accommodation is to ensure safety and security to the government servant, in addition to accessibility to the office. If the very purpose could not be served in view of the multiple deficiencies in the house, including the damaged doors and windows, whether the said accommodation could be considered as one offered but refused to be accepted by the applicant. Answer to this question is to be only an emphatic 'NO'. For, an accommodation offered should be one which is fit for habitation. Just as right to life enshrined in Article 21 of the Constitution means right to live with human dignity, offer of an accommodation should also correspond to the status of the employee wherein he could reside with that kind of respect

commensurate with his status. If the house is full of defects, with broken doors and windows, accessible to the entry of animals and reptiles, that house can never be termed as one suited to the status of the applicant. Thus, non occupation of the accommodation was on account of an inevitable situation. The accommodation would then be deemed not to have been offered.

10. The house was no doubt got repaired in March 2002. Yet the applicant did not occupy the same. The question is whether it is on account of the fault of the applicant or the respondents. Here again, if the report of the PMG is considered, the house remained in such a state that it was not fit for occupation. Thus, notwithstanding the fact that the house was got repaired, the repair was only with reference to the bathroom fittings, pipe settings etc., The benefit of the above repairs would have been that the twelve odd employees in the post office would have been benefited of water supply etc. The applicant cannot be faulted for his non occupation. Of course, he could have insisted for full repairs but then, in all expectation, he would have made arrangements for living on a rented accommodation for a minimum period. Dequarterization of the accommodation made on 30.01.2003 resulted in the applicant's being paid HRA for one day, and this confirms the entitlement of the applicant to draw HRA. Delay in dequarterization on the part of the respondents cannot disentitle the applicant to claim HRA for the period anterior to the date of dequarterization as the applicant because of the poor condition of the accommodation made available to him had make alternate arrangements by paying rent."

11. In the above O.A the Single Bench had declared that the applicant was entitled to the HRA for the period prayed for. The directions in that O.A were relied upon by the Single Bench in the matter of K.P.Babu vs. Union of India & Ors., in O.A.No.78/2012 delivered on 26.07.2012, produced at Annexure A-14. It was declared therein that the O.A succeeded and that the applicant was entitled to HRA from the date of joining till he occupied the quarter or till it is made fit for habitation. Drawing upon these decisions and the facts and circumstances in this matter brought out earlier, this O.A also succeeds. It is declared that the applicant is entitled to HRA with effect from the date she had joined the post ie., 15.09.2017 onwards. She may be granted the said allowances along with the refund of whatever recovery has been made until the interim order of this Tribunal was passed staying recovery on the HRA. The HRA may continue to be paid to her until the respondents properly repair the quarter and it is declared fit for occupation by the concerned authorities among the respondents. It is also directed that the respondents should issue necessary orders enabling the applicant to draw the HRA as per rules applicable in her case. All action in this regard should be completed within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 6th day of June 2022)