

(2015) 04 DEL CK 0318

In the Delhi High Court

Case No : Writ Petition (C) 4177 of 2015

Tushar Ranjan Mohanty

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Citation : (2015) 04 DEL CK 0318

Hon'ble Judges : Kailash Gambhir, J; I.S. Mehta, J

Bench : Division Bench

Advocate : R.V. Sinha and R.N. Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.

C.M. Appl. No. 7570/2015 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

W.P. (C) No. 4177/2015

1. Challenge in the present petition is to the order dated 27.07.2010 passed by the learned Tribunal in O.A. No. 2359/2009, order dated 03.02.2010 in M.A. No. 301/2010 and M.A. No. 302/2010 in O.A. No. 2359/2009, order dated 30.09.2010 in R.A. No. 250/2010 in O.A. No. 2359/2009, and the order dated 05.09.2014 in M.A. No. 601/2012 and M.A. No. 2150/2012 in O.A. No. 2359/2009. The petitioner in the present writ petition has also sought certain other directions against the respondents in terms of prayer paras (iv) to (viii).

2. Mr. Tushar Ranjan Mohanty has addressed arguments in support of his petition himself. He contends that by order dated 03.03.2008 passed by the respondent, he was placed under suspension because of the initiation of disciplinary proceedings against him. In the said order itself, it was also directed that so long

as the said order remains in force, the headquarters of the petitioner shall be at New Delhi and the officer shall not leave the headquarters without obtaining the prior permission of the officer who had signed the suspension order. Contention raised by the petitioner is that he was allotted a Government accommodation from Revenue Pool at Ghaziabad and by the said suspension order, a clear direction was given to the petitioner that he shall not leave the headquarters, which clearly meant that the headquarters were at New Delhi. Therefore, he was required to shift to New Delhi and then not to leave the jurisdiction of the headquarters. The petitioner has placed reliance on O.M. No. 11014/2/E.II(B)/82 dated 19.03.1983, which as per the petitioner clearly provides that a Government servant, who, on transfer, has been permitted to retain a Government accommodation at the old station on payment of normal rent or penal rent or retains Government accommodation unauthorizedly on payment of damages etc., will not be entitled to HRA at the new station for the period beyond 8 months from the date of his transfer. The petitioner submits that the said O.M. entitles the petitioner to claim HRA for a period of 8 months during the period of his transfer. The petitioner has also invited the attention of the Court to his case being considered as that of a case for transfer by allowing the travelling allowance for transfer by the respondent themselves, but yet the respondents denied the said HRA to the petitioner for the period he remained in a rented accommodation in terms of the order of suspension dated 03.03.2008. The petitioner further argues that he has been making repeated requests to the respondents through written communications that he be permitted to stay with his family at Ghaziabad and in the event of the requests being not acceded to, to pay him the HRA for occupying the rented accommodation at New Delhi. The petitioner has invited the attention of the Court to the letters dated 30.04.2008, 04.09.2008 and 19.03.2009 written by him in this regard.

3. We have heard the petitioner at considerable length and given our anxious consideration to the pleas raised by him. We have also heard Mr. R.V. Sinha, Advocate, who appears on behalf of the respondents on advance notice.

4. The said pleas raised by the petitioner have been convincingly dealt with by the Tribunal in their orders which are under challenge in the present petition and we find ourselves in complete agreement with the reasoning of the Tribunal in dealing with the pleas of the petitioner. The petitioner had shifted to Ghaziabad after he had surrendered the General Pool accommodation which was allotted to him in New Delhi. The accommodation at Ghaziabad was allotted in favour of the petitioner at his request, as his son had joined some course of study in Ghaziabad. The petitioner was later placed under suspension in terms of Rule 10(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 vide order dated 03.03.2008. In this suspension order, it was stated that headquarters of the petitioner shall be at New Delhi and he shall not leave the headquarters without obtaining the prior permission of the respondents. As per the petitioner, he had taken a rented accommodation in New Delhi adhering to the requirement of the suspension order dated 03.03.2008 whereby the

petitioner was required not to leave his Headquarters without prior permission of the respondents. It is also the case of the petitioner that he was not given any permission to continue with his stay at Ghaziabad and therefore he was entitled to claim the HRA after having occupied a rented accommodation in New Delhi. While dealing with the contentions of the petitioner, the learned Tribunal in the impugned order dated 27.07.2010 has taken a view that there was no change in the Headquarters of the petitioner after he was placed under suspension which continued to be at New Delhi except that there was only a change of office and therefore the petitioner cannot take any shelter under the plea that by the order of suspension he could not have left the jurisdiction of the place of his Headquarters. It is also an indisputable fact that the petitioner continued to occupy the Revenue Pool accommodation in Ghaziabad and yet he raised a claim for HRA even for the period when he was occupying accommodation at Ghaziabad. The learned Tribunal is correct in taking a view that as per the Government of India instructions the petitioner is not entitled for HRA for the period when he was occupying a Government accommodation at Ghaziabad. We also find no force in the plea raised by the petitioner that in terms of the O.M. No. 11014/2/E.II(B)/82 dated 19.03.1983, he was entitled to claim HRA. We fail to comprehend as to how the order of suspension can be construed as an order of transfer. With regard to the plea raised by the petitioner that he was granted travelling allowance for transfer by the respondent themselves, the Tribunal in the order dated 05.09.2014 has clearly observed that the transfer TA Bill passed by the department has been clearly against the rules and that cannot be made a ground for the petitioner to claim that his case was a case of transfer. For better appreciation, the relevant paras of the order dated 05.09.2014 of the Tribunal are reproduced:-

"9. We find that all the aspects raised by the applicant here had been raised by him in the original arguments based on which order dated 27.07.2010 had been passed. Only one new fact is now being brought to the notice of the Tribunal that his transfer TA Bill had been passed giving him full allowances. The fact is that for both the posts, the headquarter was New Delhi. While he was with the Income Tax Department, they offered him a government accommodation belonging to Income Tax pool at Ghaziabad on his request so that it helps him in his child's education. When he was put under suspension, his headquarters were shown to be New Delhi. Therefore, clearly there has been no change of place and by no stretch of imagination it could be called a transfer. This would be clear from the definition of transfer itself under Rule 2(18) of the Supplementary Rules, which are extracted below:-

"18) "Transfer" means the movement of a Government servant from one headquarter station in which he is employed to another such station, either-

(a) to take up the duties of a new post, or

(b) In consequence of a change of his headquarters."

10. No headquarter station has changed. It was only an accommodation by the Income Tax Department that he was allowed to stay in Ghaziabad while his headquarters was New Delhi. In fact, the transfer TA bill passed by the department has been clearly against the Rules and that cannot be made a ground for the applicant to now claim that his case was of transfer.

11. In fact, in the earlier order, the Tribunal had referred to HRA Rules and noted the fact that for drawing HRA by a government servant, the following certificate has to be given:

"Certified that the Government servants for whom House Rent Allowance is drawn in this bill have not been provided with any Government accommodation."

The applicant was, therefore, clearly not eligible.

12. The applicant had also drawn the attention of this Tribunal on the earlier occasion, as well as now, to provisions of OM dated 19.03.1983 of the Ministry of Finance, which provides as follows:-

"A Government servant, who, on transfer has been permitted to retain Government accommodation at the old station on payment of normal rent or penal rent or retains Government accommodation unauthorizedly on payment of damages etc., will not be entitled to HRA at the new station for the period beyond 8 months from the date of his transfer.

8.1) "Note" mentioned under the head "Suspension" in the HRA and CCA-General Rules and Orders, is also reproduced below:

"Note: If the headquarters of a Government servant under suspension are changed in the public interest by orders of a Competent Authority, he shall be entitled to the allowances as admissible at the new station, provided he furnishes the requisite certificate with reference to such station."

"18) "Transfer" means the movement of a Government servant from one headquarter station in which he is employed to another such station, either-

(c) to take up the duties of a new post, or

(d) in consequence of a change of his headquarters."

13. It would be clear from the above that this refers to cases of transfer or where headquarters are changed and not in the present case of the applicant in which the headquarters have not changed at all. The respondents, in order to help the applicant, had allowed him to stay at Ghaziabad, which benevolence on the part of the respondents the applicant is now using to claim that his was a transfer from Ghaziabad to New Delhi. This is clearly misconstrued. Therefore, we dismiss MA 601/2012."

5. We find no tangible ground to take a different view than the view taken by the Tribunal in the order under challenge in the present Writ Petition. The present petition is not only devoid of any merit but is wholly misconceived and is

accordingly dismissed.