

HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.713 of 2023

Sri Oshihar Prasad,

Son of Sri Akshay Lal Mahto, Assistant Commandant (Adm), C/O
Inspector General, Border Security Force, Frontier Headquarter
Tripura, P.O. Salbagan, P.S. Capital Complex, Salbagan, Agartala,
Tripura 799012.

..... **Petitioner(s)**

- V e r s u s -

- 1. The Union of India,**
Represented by the Secretary, Ministry of Home Affairs,
Government of India, North Block, Central Secretariat, New
Delhi 110001.
- 2. The Director General, BSF,**
CGO Complex, Lodhi Road, New Delhi 110003.
- 3. The Financial Advisor, Border Security Force,**
CGO Complex, Lodhi Road, New Delhi 110003.
- 4. The Inspector General, Border Security Force,**
Frontier Headquarter, Salbagan, Agartala, Tripura, 799001.
- 5. The Commandant (Coordinator), BSF,**
CGO Complex, Lodhi Road, New Delhi 110003.

.....**Respondent(s)**

For the Petitioner(s) : Mrs. Sujata Deb (Gupta), Advocate.

For the Respondent(s) : Mr. B. Majumder, Dy. S.G.I.

Date of hearing : **14th February, 2025.**

& delivery of
Judgment & Order

Whether fit for reporting :

YES	NO
√	

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER (ORAL)

Heard Mrs. Sujata Deb (Gupta), learned counsel
appearing for the petitioner. Also heard Mr. B. Majumder, learned
Dy. SGI appearing for the respondents.

[2] The admitted facts involved in this case are that the petitioner was originally posted at 84 Bn BSF, Seema Nagar, South Bengal. He was relieved from the said Battalion vide movement order dated 20.06.2021 on his transfer to Tripura and he joined at Headquarters Tripura Frontier BSF, Salbagan on 02.07.2021. While posted in 84 Bn BSF at Seema Nagar, South Bengal, the petitioner was allotted Government Type-III quarter at Seema Nagar by the authority of 84 Bn BSF from 11.07.2018 till he vacated the same on 19.06.2021 and on vacation of his Government quarter, he shifted his family to his own house at New Delhi.

[3] Thereafter, on 31.08.2021, the petitioner submitted one application for grant of additional HRA (Annexure 6) for shifting his family from last place of posting to New Delhi on his transfer to non-family locations like North-Eastern region. Petitioner claimed additional HRA on the basis of Office Memorandum dated 22.01.2019 issued by the Under Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi (Annexure 5). Said petition was turned down by the Commandant (Coord) vide communication dated 08.09.2022 (Annexure 7) issued from the office of Directorate General of Border Security Force and was communicated to the Frontier Headquarter, Border Security Force, Tripura. Then again, he submitted another application on 14.10.2022 to the Inspector General, Ftr HQ BSF, Tripura vide Annexure-9 claiming such grant of additional HRA w.e.f.

02.07.2021 and again the same was rejected by the Department vide communication dated 09.10.2023 (Annexure 11).

[4] The sole ground for such rejection was that before relinquishing his charge at 84 Bn BSF of Seema Nagar, South Bengal on 20.06.2021, he vacated the quarters one day prior to the same i.e. on 19.06.2021. Said fact was also communicated by another communication dated 18.09.2024 (Annexure 13) issued from the Directorate General Border Security Force, Ministry of Home Affairs to H.Q., Special DG, BSF (Eastern Command).

[5] In view of the above said facts, the sole question emerges for decision in this writ petition is whether the petitioner is entitled to additional HRA in terms of Memorandum dated 22.01.2019 (Annexure 5) in the event he had vacated the quarter before he relinquished his charge in the previous station.

[6] Mrs. S. Deb (Gupta), learned counsel, strenuously argues that in Memorandum dated 22.01.2019, there is no such condition that quarters should be vacated after relinquishing the charge of the previous station for entitlement to additional HRA and therefore, the plea as raised by the respondents is not tenable even in terms of said Memorandum dated 22.01.2019 itself. Mrs. Deb (Gupta), learned counsel also refers to a movement order dated 19.06.2021 (Annexure-2) whereby the petitioner was directed to depart on 20.06.2021 (afternoon) and submits that for compliance

or the direction as given in said movement order, the quarters was vacated on 19.06.2021 itself.

[7] Mr. B. Majumder, learned Dy. SGI, however, contends that before the petitioner was released from his previous station, he voluntarily vacated the quarters at Seema Nagar and therefore, in no way, he is entitled to get any additional HRA in terms of the said Memorandum dated 22.01.2019. Mr. Majumder, learned Dy. SGI also argues that during hearing of this writ petition on 01.08.2024, the matter was under consideration before the Headquarters of BSF upon the recommendation of Kolkata Zonal Office and the Court accordingly asked the respondents to bring the decision on the petitioner's request for such HRA on record. Thereafter, on 26.09.2024, it was submitted by Mr. Majumder, learned Dy. SGI, under instruction from his client that a written instruction was received from the Deputy Commandant (Law), HQ Tra Ftr, BSF that the proposal for grant of additional HRA on transfer to North Eastern Region made by the petitioner was examined in detail in consultation with the Finance Wing and Law Dte, FHQ and the Finance Wing did not concur with said proposal regarding admissibility of HRA (in addition to HRA admissible at the new place of posting).

[8] Learned Dy. SGI also further contends that the petitioner at the time relinquishing his charge at Seema Nagar,

South Bengal, never filed any application for retention of said quarters and therefore, he cannot claim any additional HRA now.

[9] This Court has given thoughtful consideration of the rival contentions placed by the parties and also on the materials as placed on their behalf.

[10] From the side of respondents, the entire Scheme/Office Memorandum dated 02.09.2022 issued by the Ministry of Home Affairs dealing with the matter of retention of Departmental accommodation and other allied matters are placed on record under Annexure R/2A. Learned Dy. SGI also refers to Clause 22 of said Memorandum and for useful reference, said Clause 22 is excerpted below:

22. RETENTION OF ACCOMODATION

Events	Permissible period of Retention of Residence
Normal Tenure	➤ Initially for a period of three years from the date of allotment or till the date of posting out. ➤ Further retention will be subject to review on the basis of place of posting of the allottee or extraordinary circumstances like children appearing for board or final year university examinations. ➤ Personnel posted to specified extreme hard areas/hard areas/high altitude areas/North-East/ANO/CI ops or anti-Insurgency role/non-family stations will be permitted to retain accommodation already occupied in previous location till his posting-out from such locations/deployment or three years whichever is earlier. Such personnel be further directed to seek allotment of Separated Family Accommodation (SFA) and shift there. ➤ Personnel deployed in UN Mission assignment as part of

	CIVPOL/Special Police Unit contingent will be permitted to retain the accommodation already occupied in previous location till his return from such assignment and further posting out from the Holding Unit/HQ.
Resignation, discharge (other than superannuation & VRS), dismissal, removal from service, termination of service or unauthorized absence	At normal rate of License Fee for one month from the date on which allottee was struck of strength.
Superannuation/VRS	➤ At normal rate of License Fee for six months. ➤ At double License Fee for next four months or till completion of academic session of children whichever is earlier. ➤ Subject to condition that the retiree does not own a property in the geographical/revenue jurisdiction of the city/town.
Death of allottee	➤ At normal rate of License Fee for 12 months from the date of death in case of normal death & further extendable by 12 months. ➤ At normal rate of License Fee for 36 months from the date of death in case of martyrs. ➤ Subject to condition that the NoK does not own a property in the geographical/revenue jurisdiction of the city/town.
Transfer to a place other than his/her priority	At normal rate of License Fee for 02 months and at double Licence Fee for next six months.
Leave (other than refused leave, terminal leave medical leave, maternity leave)	At normal rate of License Fee for Four months and at double Licence Fee for next six months.
Study leave within India or abroad	➤ At normal rate of License Fee for six months. ➤ Followed by allotment of alternate accommodation of one type lower thereafter.
Deputation	➤ At normal rate of License Fee for two months beyond the date of assumption of charge on deputation tenure. ➤ At the normal rate of License Fee till completion of deputation tenure in case of placement in non-family station or foreign location.
Leave on medical grounds	At normal rate of License Fee for the full period of leave.
Maternity leave	At normal rate of License Fee for the period of maternity leave plus leave granted in continuation subject to a maximum of five months.
Leave preparatory to	At normal rate of License Fee for the full

retirement or refused granted or Earned leave granted to Govt servant who retired under FR 56 (j)	period of leave on full average pay subject to a maximum 80 days in case of leave preparatory to retirement and four months in other cases, inclusive of the period permissible in the case of retirement.
On proceeding for course or training	At normal rate of License Fee for the full period of course/training.

[11] The related Memorandum dated 22.01.2019 (Annexure 5) as relied on by both the parties is also extracted hereunder:

"No.II-27012/29/2018-PF-I(CF No.3437419)
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
Police II Division
(PF-I Desk)

North Block, New Delhi,
Dated, the 22nd January, 2019

OFFICE MEMORANDUM

Sub: **Grant of additional HRA to CAPF personnel on their transfer to non-family locations in the event of their vacation of Government accommodation retained by them after 3 years.**

The undersigned is directed to say that a proposal for grant of HRA of Old Station/Selected Place of Residence in addition to the HRA admissible at the new place of posting, to CAPF personnel on their transfer to non-family locations, viz North Eastern Region, Sikkim, Andaman & Nicobar Islands, Lakshadweep Islands, State of Jammu & Kashmir and Left Wing Extremist (LWE) areas, in the event of their vacation of Government accommodation retained by them after 3 years, as per Ministry of Housing & Urban Affairs OM No.12035/4/2015-Pol.II dated 14.11.2017 and 01.08.2018, till they remain posted in such non-family stations, was examined in this Ministry in consultation with Ministry of Finance (Department of Expenditure), and it has agreed to:-

- (i) allow HRA, on vacation of the Government accommodation by families of CAPF personnel after 3 years retention period, who are posted in non-family stations/locations (as defined by M/o Housing & Urban Affairs in their OM dated 01/08/2018), in addition to the HRA admissible at the new place of posting.
- (ii) relax the mandatory provision of keeping families of CAPF personnel at last place of posting for allowing HRA at the rate of Selected Place of Residence.

2. This issues with the approval of Ministry of Finance (Department of Expenditure), vide their ID No.28/2/2018-E.II(B) dated 18.01.2019 and as vetted by Integrated Finance Division of this Ministry vide their Dy No.3437419 dated 22.01.2019.

Sd/-

Under Secretary to the Govt of India"

[12] It appears that the pre-conditions for entitlement of additional HRA are that the transfer of the person concerned should be on any non-family locations like North Eastern region, Sikkim, Andaman & Nicobar Islands, Lakshadweep Islands etc. and second condition is that person concerned shall have to vacate the Government quarters allotted to him in his previous place of posting after 3 years of retention period and he will be thereafter entitled to get such additional HRA.

[13] In the case in hand, admittedly, the petitioner retained the quarters from 11.07.2018 to 19.06.2021 at Seema Nagar, South Bengal i.e. for a period abit less than 3 years but on that ground the claim of the petitioner was not rejected by the respondents. Even in the Memorandum dated 02.09.2022 (Annexure R/2A) framing the scheme for such quarter at Clause 22, the term "initially for a period of three years from the date of allotment or till the date of posting out (emphasis laid)" is also incorporated. The basic reason for denial of such additional HRA by the respondent was that he vacated the allotted quarters one day prior to his release from said previous place of posting. The aforesaid Memorandum of 22.01.2019 does not lay any such pre-condition that if a person is posted out prior to completion of 3 years of service in the station and thereby he vacates his quarters prior to the date of his release, he will not be entitled to any such additional HRA. In fact, additional HRA is to be counted from the

date of his joining in new place of posting and not from the date of his release from previous place.

[14] In view of above, the ground of rejection of the claim of the petitioner regarding his entitlement of additional HRA is not found to be convincing and acceptable. In consequence thereof, the writ petition is allowed.

[15] The respondents are directed to release additional HRA in favour of the petitioner from the date of his joining in Tripura i.e. w.e.f. 02.07.2021 till he remain posted in Tripura, as arrear within 3 (three) months from today. Consequently, the related letters dated 09.10.2023 and 18.09.2024 issued by the respondents to the extent of rejection of the claim of the petitioner are hereby quashed.

In terms of the above, the writ petition is disposed of.

Pending application(s), if any, shall also stand disposed of.

JUDGE

**SATABDI
DUTTA**

Rudradeep

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