

\$~38

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : March 24, 2015*

+ **W.P.(C) 2984/2015**

DINESH CHANDRA Petitioner

Represented by: Ms.Saahila Lamba, Advocate

versus

UNION OF INDIA & ORS. Respondents

Represented by: Mr.Vikas Mahajan, CGSC with
Mr.Rohan Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. Relevant facts necessary to be noted for adjudication of the present petition are that working as Assistant Sub-Inspector (Ministerial), the petitioner was posted to Directorate General, CRPF at New Delhi in July, 2003.

2. Petitioner remained at the office of the Directorate General, CRPF, New Delhi till May, 2008 and with effect from June, 2008 was posted to the office of the IG Police, CRPF, Srinagar.

3. Claiming to be a dutiful soldier who obeys the command of his senior officers, petitioner proceeded to Srinagar and reported for duty in the office of the IG Police, CRPF at Srinagar. Though entitled to a family accommodation at Srinagar, petitioner made a request that he be entitled to retain his family at New Delhi and for which HRA be sanctioned to him.

4. Reason why petitioner made the aforesaid request was a Government of India Office Memorandum No.2(38)/2001-E.II(P) dated September 24,

2003 which reads as under:-

“Central Government employees posted to the specified States/Union Territories from outside the N-E Region who are keeping their families in rented houses or in their own houses at the last place of posting outside the N-E Region, will be entitled to HRA 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 TA for family or not subject to the condition that hired private accommodation or owned house at the last station of posting is put to bona fide use of the members of the family. These concessions are admissible also to those posted to Andaman and Nicobar Islands and Lakshadweep. The benefit of two HRAs is admissible also to those employees who on their transfer keep their families in the previous station in own/hired accommodation after vacating Government accommodation due to their transfer to N-E Region etc. – OM No.2(38)/2001-E.II(B) dated 24.9.2003.”

5. The OM aforesaid pertains to the North-Eastern region and make eligible Central Government employees posted in the North-Eastern Region to 2 HRAs. Notwithstanding State of Jammu & Kashmir not being in the North-Eastern region, the petitioner was relying upon an office order dated 24.10.2003 issued by the Director General CRPF which extended the benefit of the OM dated 24.9.2003 to those who were posted in the State of Jammu & Kashmir. The OM dated 24.10.2003 issued by the Director General CRPF reads as under:-

*“To,
Sh.V.P.S.Panwar,
Addl.DIGP (Adm),
Office of the IGP (Ops), CRPF,
Jammu (J&K)*

*Subject: Allowing HRA at previous station rates
when posted to J&K.*

2. As per GOI, Ministry of Urban Affairs & Employment, Directorate of Estates, OM No.12035/2/20 II (pt.II) dated 15/9/1998 (copy enclosed), a posting to Jammu Kashmir may be treated at par with that of posting to North-Eastern Region. Therefore, orders to allow HRA at previous station rates on posting to NES Region are equally applicable for posting to J&K also."

7. So reading the afore-noted OMs, on June 20, 2008, the Competent Authority sanctioned to the petitioner that he could keep his family at New Delhi and draw HRA @ 30% of his basic pay with effect from June 01, 2008. The relevant portion of the sanction order dated June 20, 2008 reads as under:-

<i>Number, post and name of personnel</i>	<i>Period of drawing HRA</i>
---	------------------------------

8. Petitioner remained in the office of IG Police, Srinagar till August 31, 2011. Admittedly, the petitioner was paid HRA for the period from June 01, 2008 to August 31, 2011 i.e. for the period petitioner remained posted in IG Police, Srinagar.

9. On October 18, 2011 the Office of Chief Director Police, CRPF, Srinagar, Jammu Kashmir issued an office order directing the petitioner to refund the sum of ₹2,32,899/- being HRA received by him with effect from June 01, 2008 till August 31, 2011. The relevant portion of the office order dated October 18, 2011 reads as under:-

“The following workers/officials/ posted at this Headquarters, due to not getting family govt. Housing scheme have kept their families at their previous posting as well as with regard to letter of Chief Director Letter No.A.two-2/95-99-q.1 (section-5) dated 07/01/2000 mentioned in para no.1(4), the house rent allowance provision had been accepted. Police Dy. Director, HQ, Delhi had through its letter bearing No.H.Three-1/2010-11-Page 4 dated 09.08.2010 has informed that the officials who have been posted at Jammu and Kashmir (Srinagar) are not allowed for house rent allowance for keeping their families at their previous place of posting and thus the letter dated 07/01/2000 was cancelled.

02. Therefore in compliance with the orders, the following officials/workers who had been given provision of house rent allowance for keeping their families at the previous place of posting has been temporarily stopped and it is directed to recover amount from date of its grant till month of July, 2011 from all the officials.

The names of the officials are as follows:-

S. No.	F. No. Rank & Name	Posted Place	Period	Amount	Remark
02	8315800096 Insp (M) Now SM/OS Dinesh Chandra	O/O IGP CRPF N/S	01.06.2008 to 31.08.2011	2,32,899	O/P already shown in LPC

*Reference by Police Chief Director dated 17.10.2011”
(Emphasis Supplied)*

10. Pursuant to issuance of office order dated October 18, 2011, a sum of

₹2,32,899/- stands recovered from the salary of the petitioner.

11. In these circumstances, the petitioner has filed the present petition assailing the legality of the office order dated October 18, 2011,

12. To the reader it would be apparent that as regards the petitioner he contends firstly; that having no role to play in the HRA being sanctioned and nothing being alleged against the petitioner of having played a fraud or made a misrepresentation, the respondents having paid HRA to the petitioner, gave birth to a belief in the mind of the petitioner that he was entitled to the HRA which he received and hence spent the same. Having spent the same by keeping the family at a rented accommodation in New Delhi, petitioner has acted to his detriment and thus respondents would be estopped from asserting to the contrary. Second contention urged is that the Government of India OM dated September 24, 2003 pertaining to posting in the North-Eastern region being extended to posting in Jammu & Kashmir by and under the Office Order dated October 24, 2003 issued by the DG CRPF and the same would entitle the petitioner to HRA which was rightfully sanctioned.

13. Apart from the fact that the impugned order suffers from the vice of denial of natural justice inasmuch as the same has not been preceded by any show-cause notice served upon the petitioner requiring him to respond as to why the HRA benefit be not withdrawn, we find the recovery to be contrary to law on two counts.

14. The first legal point on which present petition must succeed is that the Government of India OM dated August 24, 2003 relating to place of posting of Central Government employees in the North-Eastern region has been extended by the Director General CRPF to postings in the State of Jammu & Kashmir. Thus, we find that the respondents had acted as per law when they

sanctioned HRA to the petitioner for the period he would be posted at Srinagar.

15. The petitioner would also be entitled to relief on the ground that he i.e. petitioner neither played a fraud nor made any misrepresentation when he claimed HRA and the same was sanctioned. Post sanction, HRA was paid to petitioner on an express understanding of the respondents that the petitioner could retain his family at a rented accommodation at New Delhi and pay the rent to the landlord. The HRA received by the petitioner was paid over by the petitioner to the landlord at New Delhi where petitioner's family was residing. The respondents would be estopped from asserting to the contrary and for which we may only note one decision of the Supreme Court; being the decision reported as 2009 (3) SCC 475 Syed Abdul Qadir & Ors. vs. State of Bihar & Ors. (refer to para 58).

16. The petition stands disposed of quashing the impugned order dated October 18, 2011.

17. Mandamus is issued to the respondents to pay over the sum of ₹2,32,899/- (deducted from salary of petitioner) to the petitioner. The sum would be paid to the petitioner within a period of four weeks from today failing which the amount would be paid with simple interest @ 9% per annum.

18. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 24, 2015/mamta