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

Reserved on: 4th February, 2020

Decided on: 19th February, 2020

W.P. (C) 5812/2018 and CM APPL. 22578/2018 (stay)

UNION OF INDIA & ORS.

.....Petitioners

Through:

Mr. V.S.R. Krishna, Advocate

versus

ASHES KIRAN PRASAD

.....Respondent

Through:

Respondent-in-person.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. The Railways has in this petition challenged an order dated 11th October, 2017 passed by the Central Administrative Tribunal, Principal Bench, Delhi ('CAT') disposing OA No.4241/2013 filed by the Respondent herein, holding that the Respondent was entitled to House Rent Allowance ('HRA') at the rate applicable at the previous place of his posting i.e. Patna, for the period from 27th October, 2007 to 31st December, 2016, during which he was posted in the North Western Railway (NW Railway), Jaipur. By the impugned order, the CAT directed the Railways to work out the HRA amount at the rate applicable in Patna based on the salary drawn by the Respondent while being posted in Jaipur.

2. The background facts are that the Respondent is a member of the Indian

Railway Traffic Service ('IRTS'). He commenced his service on 29th August, 1983 with the East-Central Railway ('EC Railway'), Hajipur. On being promoted to the Senior Administrative Grade ('SAG'), he was shifted from the EC Railway to the North-East Frontier Railway ('NF Railway'), Guwahati. He remained posted in Guwahati from 30th October, 2003 to 26th October, 2007. From there, he was transferred to the NW Railway, Jaipur with effect from 27th October, 2007.

3. While the Respondent was posted at Hajipur, Bihar he was drawing HRA of Rs.2015/- calculated at the rate of 15% of his basic pay in the scale of Junior Administrative Grade (JAG). The Respondent first approached the CAT, Patna Bench seeking HRA at the rate that was applicable to Patna, instead of the rate at Hajipur, where he was posted. The CAT by an order dated 1st December, 2004 upheld the Respondent's claim. The writ petition filed by the Railways challenging the aforesaid order of the CAT came to be dismissed by the Patna High Court. Thereafter, the SLP filed by the Railways came to be rejected by the Supreme Court as well.

4. Consequent upon his promotion as SAG and his posting at Guwahati, the Respondent was given Government accommodation at Guwahati. However, in terms of the policy applicable to officers posted to the NF Railway, such officers were entitled to avail one of two options. The officer could either retain the allotted quarter at the previous place of posting or could draw additional or second HRA at the same rate as paid prior to the officer's posting in the NF Railway. The Respondent continued to get paid HRA at the rate applicable to Hajipur, Bihar.

5. When the Respondent got transferred to the NW Railway in Jaipur, he was permitted to retain his family at the previous place of posting. Initially, the permission in this regard was granted by the Railways for one year and then was extended. According to the Respondent, his family had to stay at Patna, where he has his house. He demanded that HRA at the rate applicable to Guwahati, calculated on the basis of his pay drawn at Jaipur, be paid to him. This was, however, denied to him.

6. As regards the HRA for the period of his posting at Guwahati, the Petitioner's grievance was that the HRA should have been based on his pay at Guwahati i.e. in the SAG. According to the Respondent, the logic of the Petitioners was "strange" in permitting him to retain his quarter so that amount of HRA is tied to the pay last drawn by the officer just prior to his posting in the NF Railway. He pointed out how another batchmate of his had been transferred one month later, by which time he had already been promoted as SAG and was, thus, entitled to receive HRA based on his pay as SAG.

7. It is in this background that the Respondent filed OA No.4241/2013 in the CAT, Principal Bench, Delhi seeking directions to the Railways to grant him the following:

“(i) HRA for his stay at Guwahati at the rate applicable at the previous place of posting but based on his current salary drawn at Guwahati which is the rule for calculating HRA.

(ii) HRA for his stay at Jaipur at the rate applicable at Guwahati/Patna

based on his current salary drawn at Jaipur.”

8. In the first round the CAT passed an order dated 13th November, 2014 holding the following:

- i. There was no provision in the Railway Boards letters dated 6th January, 1997 and 1st July, 2013 stipulating that officers/staff who joined New Zonal Railways like NW Railways were entitled to draw HRA at the rate applicable at their previous place of posting irrespective of the fact that they were in receipt of the HRA at the last place of posting. Consequently, there was no infirmity in the decision of the Railways rejecting the Respondent’s prayer in that regard.
- ii. As regards the claim of HRA for the period during stay in Guwahati the Respondent was entitled to draw HRA at the same rate as was applicable at Patna. The decision of the Railways to reject this claim was contrary to Railway Board’s own letter dated 30th June, 1984. Therefore, this part of the Respondent’s claim deserved to be allowed.

9. Aggrieved by the above decision, both the Railways and the Respondent filed writ petitions in this Court. The writ petition of the Respondent i.e. W.P.(C) No.4679/2015 and the writ petition of the Railways being W.P.(C) No.6202/2015 were disposed of by a Division Bench (‘DB’) of this Court by a common order dated 29th February, 2016.

10. As regards the Respondent’s claim pertaining to HRA for the period of his posting in Guwahati, the DB found the CAT to have fallen into error.

The DB set aside the order of the CAT in this regard and allowed the Railways' writ petition. On the Respondent's claim that his HRA must be calculated with reference to his enhanced basic pay as SAG in Guwahati, the DB observed as under:

“12...A reading of the letter dated 30th June, 1984, would indicate that an employee posted to NF Railways is entitled to two HRAs. The first HRA is payable as per the place of actual posting. The second HRA is the same as paid to the said employee at the last station of posting before he was posted to the States of Assam, Meghalaya, Nagaland, Manipur, Tripura etc. in other words, the letter grants a concession and indulgence to the employee as he is paid the HRA at the rate which was being paid at the place of his last posting. The amount so fixed depends upon the basic pay being paid to the employee at the place of his last posting, before he was transferred and posted to the States of Assam, Meghalaya, Nagaland, Manipur, Tripura, etc...”

11. In respect of the CAT's finding that the Respondent must be paid HRA at the rate applicable to Patna, the DB again differed from the CAT in the following terms:

“14. A reading of the order dated 15th January, 2008 passed in CWJC No. 10123 of 2006, *Union of India & Ors. Vs. Ashes Kiran Prasad & Anr.* would indicate that the challenge in the writ petition was to the order of the Central Administrative Tribunal dated 1st December, 2014, by which the employee was directed to be paid HRA for occupation of the house at Patna at the rate applicable to house rent allowance at Patna, though, the employee was posted at Hajipur. The Court noticed that the employee had been permitted to hire an accommodation at Patna due to paucity of government accommodation at Hajipur. In these circumstances, the employee had submitted that he had taken a house on rent at Patna, which belonged to a Joint Hindu Family/ Hindu Undivided Family of which he was a member and, therefore, he was entitled to payment of HRA. Attention was drawn to one line in the said order to the effect that “The House Rent Allowance for the

permissible occupation of own house at Patna should commensurate with that”, we would observe is not the sole basis of making the said finding and granting relief to the employee. The primary consideration was that the employee, though posted at Hajipur, Bihar, could not be provided accommodation due to paucity of government accommodation at Hajipur. It cannot be said that this judgment or decision re-writes all principles of HRA or has the effect of negating paragraph 1703 of the Indian Railway Establishment Code. The decision should be confined to its own facts.”

12. An additional ground that weighed with the DB was that the Respondent had approached the CAT in December, 2013 for payment of arrears for the period from 30th October, 2003 till 26th October, 2007, which claim, according to it, was “clearly barred by limitation”.

13. On the Respondent’s prayer in the OA concerning HRA for his posting in Jaipur, the DB was of the opinion that the impugned order of the CAT was “silent” and “did not examine and decide the contentions” that had been raised before the DB. It, therefore, decided to remit the question concerning the Respondent’s entitlement to HRA for the period of his posting in Jaipur to the CAT.

14. The Respondent’s SLP (C) No.28411-28412/2016 against the DB’s order dated 29th February, 2016, came to be dismissed by the Supreme Court on 3rd October, 2016.

15. When the CAT heard the Respondent on his claim to HRA at the rate applicable in Patna, for the period of his posting in Jaipur, he contended that his case was one that fell within the purview of the Railway Board circular

dated 15th September, 1998, which, according to him, provided that when officers on completion of their tenure at NF Railway, are posted to a place other than the previous place of posting i.e. where they have been retaining the quarter, they will be eligible for permission to retain Railway quarters under their occupation as admissible in the case of permanent transfer. Thus, he claimed HRA for the period of his stay at Jaipur at the rate applicable at Patna, being the place of posting prior to his posting to the NF Railway. The rate would be the same as that of Jaipur, as both Patna and Jaipur were Class 'B' cities.

16. He further contended, as regards his stay at the Rest House in Jaipur, that payment of rental charges would suffice. Further, since the policy of retention of Railway quarters had been extended up to 31st December, 2016, the claim of the Respondent was within limitation. Both EC Railway and NW Railway were new zones and no accommodation was available and this explained the policy of retention of Railway Quarters at the previous place of posting.

17. The stand of the Railways before the CAT, on the other hand, was that Officers Rest Houses fell within the ambit of "Government accommodation" and that, therefore, the Respondent was disentitled, in terms of the Railway Board's letter dated 24th November, 2004, to any HRA. Secondly the Railway Board circular dated 15th September, 1998, relied upon by the Respondent, related to retention of accommodation at the previous place of duty when posted to newly created zones and would not apply in the Respondent's case as his previous place of posting was Guwahati and not

Patna.

18. The CAT in the impugned order interpreted the circular dated 15th September, 1998 as providing for “continued retention of accommodation in the previous place of posting not only when such posting happens to the NF Railways, but also thereafter when posting is out of the NF Railways”. In the CAT’s view the “only exception” was that “the new place of posting shall not be the same place where such retention of accommodation is permitted”. In the facts of the case, the CAT found the circular dated 15th September, 1998 to be squarely applicable as under:

“During his posting in the NF railway, his family was residing at Patna. The respondents clearly admit the fact of the applicant having been paid HRA during his posting at Guwahati, when his family was residing at Patna (Para 1(a) under heading Brief History of the Case refers). When posted at NW Railway, the permissibility of retention of accommodation at the previous place of posting (i.e. prior to posting at NF Railway) and admissibility of HRA during this period is covered by the provisions of letter dated 15-09- 1998 relied upon by the applicant.”

19. As regards the stand of the Railways that the Officers’ Rest Houses are equivalent to “Government accommodation”, the CAT noted that “it was not the case of the Respondents (i.e. the Railways) that there was an accommodation of the entitlement to the Applicant (the Respondent herein) that was available and offered to him but he had refused the same.”

20. In the very next sentence the CAT observed as under:

“Of course, a general consent/refusal without indicating or certifying availability of accommodation was asked for from the applicant and certain others and the applicant refused the same. Nor was there any

stipulation that in the event of availability of suitable accommodation if the same is refused, the same disentitles the individual from claiming the HRA. Thus, the entitlement of the applicant to the grant of HRA has been intact.”

21. For the aforementioned reasons, the CAT held that the Respondent would be entitled to HRA for the period of his posting in Jaipur at the rate applicable at Patna.

22. During the pendency of the present petition two additional affidavits have been filed by the Railways. Along with the first additional affidavit dated 4th September, 2018 the Railways has placed on record copy of the circular letter dated 15th September, 1998. This pertains to retention of railway accommodation in case of posting or transfer to the NF Railway.

23. Along with the second additional affidavit dated 23rd October, 2018, the Railways had placed on record a copy of note dated 1st December, 2009 seeking the consent/refusal for the allotment of Railway Quarters. It is seen that the Respondent has next to his name in the column “Re-consent/refusal” recorded his choice as “refusal”, and signed against it. It bears noting that the Respondent has not filed any response to the second additional affidavit, where the Railways has drawn attention to the aforementioned aspect.

24. Placed before the Court is also a series of Railway Board letters regarding retention of railway accommodation by railway employees. The earliest of this is circular/letter dated 15th January, 1990 states that the benefit of retention of railway accommodation to employees “should be

allowed only to the extent permissible under the rules/extant instructions and that no special cases should be made out for any relaxation”. This makes it explicit that the permission for retention is only instances wherein the transfer is to the NF Railway and other specific instances noted therein.

25. In the instructions dated 6th June, 1991 of the Railway Board, it has been noted as under:

“For some time past, it has been observed that some officers on transfer from one station to another, tend to keep on occupying the ‘Officers Rest Houses’ at the new places of posting for unduly long periods. One of the methods adopted is that they do not apply for pooled residential accommodation, as required, on joining duty at a new place. Some of them also continue to draw House Rent Allowance. In some cases, the officers do not even occupy nominated bungalows and continue to stay in rest Houses. The result is that while on one hand, the Railway Administration is put to financial loss, on the other hand officers in bonafide need of rest house accommodation are deprived of that facility.”

26. The said letter of the Railway Board dated 6th June, 1991, in order to keep in check the practice noticed as above, stipulated that on allotment of regular accommodation the officer should vacate the rest house within a week and that in the event that the officer declines to accept the pooled accommodation offered to him “Rent and other charges” rate shall be recovered from him from the date of offer of such allotment.

27. The third is a Railway Board letter dated 24th March, 2005 which carried out amendments to para 2 (v) of its earlier circular dated 6th June, 1991, as under:

“(a) An officer entitled for a nominated bungalow shall not be permitted to stay in the Rest House accommodation beyond three days provided the bungalow is ready for occupation;

(b) Where the officer does not occupy the nominated bungalow under any pretext, rent at “damage” rates shall be charged from the fourth day onwards:

Provided that in case where the period of posting of a railway officer to a particular place is less than a year before his superannuation, and that he actually holds the charge of the post for less than six months, the railway officer may be allowed railway rest house for residential purpose if he does not occupy the nominated bungalow and that –

- (i) the railway officer pays normal rent for nominated residence for the period of his posting to the place;
- (ii) the railway officer pays rest house charges alongwith charges for all the facilities availed; and
- (iii) no house rent allowance admissible to the railway officer for the said period is paid to the officer.”

28. A subsequent letter of the Railway Board dated 18th May, 2006 makes reference to rules on “occupation of Railway Rest Houses/Rest Rooms” consolidating all the earlier instructions.

29. Having heard Mr. V. S. R. Krishna, learned counsel for the Petitioners/ Railways and the Respondent, who appears in person, the Court is of the view that the CAT proceeded on an erroneous premise of there being no specific refusal by the Respondent of the offer made to him of the pool accommodation. As pointed out hereinbefore, the document produced by the

Petitioner Railways along with their second additional affidavit dated 23rd October, 2018, clearly indicates the Respondent's refusal of railway accommodation that was offered to him by the Note dated 1st December, 2009.

30. The Court is also of the view that the CAT erred in its interpretation of the Railway Board's letter dated 15th September, 1998, which the Respondent had placed heavy reliance on. The said letter pertains to retention of railway accommodation in case of posting on transfer to NF Railway and not for any further posting beyond that posting. The interpretation placed by the CAT on the said circular has permitted retention of accommodation at the "previous place of posting" even beyond the period of posting at the NF Railway. This does not flow from a plain reading of the said circular. While it is true that the EC zone and the NW Zone may be new zones, that by itself does not, in the absence of any circular to that effect, allow the Respondent to claim HRA at the rate applicable to Patna, which is not the place of his immediately previous posting vis-à-vis Jaipur, but, admittedly, only the place in which the Respondent had accommodated his family.

31. The Respondent mentioned the names of three officers who were allowed to retain the quarters at Delhi while they were staying at Rest Houses in Jaipur and also enclosed their pay slips, which showed that quarter rent was being deducted from their salaries for the retention of quarters in Northern Railway, Delhi even as they stayed at Railway Rest Houses at Jaipur. What the Respondent has overlooked in submitting thus is

that the previous place of posting as far as the Respondent is concerned, *vis-a-vis* his posting at NW Railway, Jaipur is the NF Railway, Guwahati. This distinguishes the case of the Respondent from the aforementioned three cases. Unless there was a specific circular applicable to his posting in the NW Railway, Jaipur, which permitted retention of his family at the place of his posting prior to his previous posting at the NF Railway, there cannot be an *ipso facto* extension of such benefit during his posting at NW Railway, Jaipur.

32. The Respondent also has no answer to the various circulars regarding retention of accommodation in an Officer's Rest House which appear to be governed by specific set of instructions, not referred to by the CAT. The specific contention of the Railways in this regard was that "the officials of the Railway is permitted to retain the quarter "on permanent transfer" for a period of two months on normal license fee and for further six months at double the flat rate/license fee on medical grounds/education session of ward beyond which the retention of the quarter is not allowed and treated as unauthorized occupation." In other words, the contention of the Railways that residing in an Officer's Rest House would amount to occupying "Government accommodation", thus disentitling the Respondent, in terms of Railway Board's letter dated 24th November, 2004, to claim HRA, ought to have been considered by the CAT.

33. For all the aforesaid reasons, the Court finds the impugned order of the CAT dated 11th October, 2017 to be unsustainable in law. Accordingly, the writ petition is allowed and the impugned order of the CAT is hereby set

aside. There shall be no order as to costs. The pending application is also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 19, 2020

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