

Form No. J (2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 1329 of 2022

Arup Ratan Gooptu

vs.

Coal India Ltd. & Ors.

For the Appellant : Mr. Swapan Kumar Datta, Senior, Advocate
Mr. Shaunak Ghosh, Advocate
Mr. Arjun Gooptu, Advocate

For the Respondents : Mr. Shiv Shankar Banerjee, Advocate
Ms. Anupa Banerjee, Advocate
Ms. Sanchita Barman Roy, Advocate
Mr. Nilarnab Paul, Advocate

Heard on : 17.09.2024

Judgment on : 17.09.2024

DEBANGSU BASAK, J.:-

1. Appeal is directed against the judgment and order dated May 20, 2022 passed by the learned Single Judge in WPA 3787 of 2012.

2. Appellant filed a writ petition assailing two letters of his employer namely, letters dated September 16/20, 2011 and November 5/9, 2011.

3. Appellant as the writ petitioner was essentially seeking House Rent Allowance (HRA) for the six months immediately on his transfer. Learned Single Judge by the impugned judgment and order negated such claim.

4. Learned counsel appearing for the appellant submits that, appellant is entitled to HRA. HRA of employees of the respondent no.1 is governed by the HRA Rules. He draws our attention to the HRA Rules and in particular to Rules 3.1 and 3.4 thereof.

5. Referring to Rule 3.4 of the HRA Rules, learned counsel appearing for the appellant submits that, two components, which entitles the appellant to HRA, stands satisfied in the facts and circumstances of the present case. According to him, the two components are appellant taking over duty in the new station and that, the appellant was not allotted the accommodation by the company at the new station.

6. Learned counsel appearing for the appellant submits that, appellant was promoted to the post of Deputy Chief Sales Manager re-designated as Chief Manager on August 18, 2008 and was transferred to Eastern Colafields Limited (ECL). Appellant was released on the same day. Appellant joined ECL, Sanctoria on October 22, 2008. Appellant was put

up at Seetalpur meant for Executives in the rank of General Manager and above intermittently for 9 days between the period October 20, 2008 to February 4, 2009. Appellant paid for his stay in such guest house.

7. Learned counsel for the appellant submits that, guest house accommodation was meant for Executives much above the rank of appellant. In any event, appellant was not allotted such guest house. He was put up at such guest house. Therefore, the occupation of the appellant at the guest house, cannot be considered to be one of an allotment in terms of the HRA Rules particularly Rule 3.4 thereof.

8. Learned counsel appearing for the appellant submits that, appellant subsequently stayed at a hotel. He discharged his duties as Chief Manager at the relevant place. Appellant thereafter made a representation for the payment of the HRA by a letter dated February 4, 2009 followed by another letter dated July 1, 2009. He submits that, the authorities responded by a letter dated July 23/24, 2009 stating that, the claim was processed and that same was sent to the competent authority for approval. Appellant was requested to apply for an accommodation.

9. Learned counsel appearing for the appellant submits that, the HRA Rules do not provide for an application for accommodation. According to him, the allotment of accommodation is to be made by the employer and not on an application by the employee. In the facts of the present case,

question of the appellant as an employee applying for accommodation does not arise.

10. Learned counsel for the appellant was made to apply in a prescribed form for accommodation. He refers to the application form. He submits that, such application form was submitted by the appellant at the request of the employer. Such submission of form does not negate the claim for HRA of the appellant.

11. Learned counsel appearing for the appellant refers to the impugned writings of the authorities, as annexed to the writ petition. He submits that, the authorities purported to deny the claim for HRA principally on the ground of Rule 3.1, non adherence to Rule 3.4 by the appellant and the application of the appellant for accommodation. He submits that, none of those grounds are tenable.

12. Learned counsel appearing for the appellant draws attention of the Court to the affidavit-in-opposition filed on behalf of the employer. He submits that, in such affidavit the employer sought to improve the case disclosed in the two impugned letters.

13. Relying upon **(1978) 1 Supreme Court Cases 405 (Mohinder Singh Gill and Another Versus The Chief Election Commissioner, New Delhi and Others)**, learned counsel appearing for the appellant submits that, the employer cannot be permitted to improve on the materials as appearing contemporaneously by an affidavit. He refers to various

paragraphs of the affidavit. He submits that, additional grounds are sought to be introduced for the denial of the HRA. According to him, the appellant is entitled to HRA and the learned Single Judge erred in not granting the same.

14. Employer is represented.

15. Appellant was an employee of Coal India Limited. Appellant was promoted to the post of Deputy Chief Sales Manager re-designated as Chief Manager on August 18, 2008 on transfer to Eastern Coalfields Limited (ECL). CIL released the appellant on the same day. Appellant joined ECL Sanctoria on October 22, 2008 at the promoted post. Appellant put up at the Seetalpur Guest House of the ECL for the period from October 20, 2008 to February 4, 2009. Admittedly, appellant stayed in such guest house for a period 9 days and paid for such stay. Thereafter, appellant stayed at the hotel of his choice.

16. Appellant claimed HRA which was denied by the employer by the two impugned writings in the writ petition.

17. Parties refer to Rules 3.1 and 3.4 of the HRA Rules governing the employment of the appellant, which are as follows:-

“3.1 An employee who refuses or surrenders accommodation offered to him by the Company shall not be eligible for house rent allowance.

3.4 *If an employee who is drawing house rent allowance, is transferred to another station, involving change of residence and leave behind his family at the old station, he shall be eligible for house rent allowance at the new station, for a maximum period of 6 months, in the following manner, from the date of release in the old station, provided that he has taken over duty in the new station, and not been allotted accommodation by the Company at the new station, and also provided further, that he does not draw separately any house rent allowance for this period, at the new station.*

In case, he has been allotted a residence at the new station (place of posting), his entitlement to house rent allowance at the old rate, will be limited only to the period of joining time:

- (i) *During the Ist 2(two) months:* *At the Same rate at which it was drawn at the old station.*
- (ii) *For the next 4(four) months:* *At the rate at which it was being drawn at the old station or the maximum amount that would have been admissible to him at the new station, had he taken a residence on rent, at the new station, whichever is less.”*

18. 3.1 prohibits HRA payment to an employee who refuses or surrenders accommodation offered to him by the Company.

19. HRA is receivable on satisfaction of the conditions laid down in Rule 3.4.

20. According to the appellant, the guest house at which, he was put up, did not constitute an allotment of accommodation made by the employer. With respect, we are unable to accept such contention.

21. Guest house belonged to the employer. Admittedly, appellant stayed at such guest house. He stayed in such guest house qua an employee of the employer. Such guest house may be meant for other Executives who are higher in rank to him. Nonetheless, employer allowed the appellant to stay in such guest house. There is no material on record to suggest, let alone establish that the employer asked the appellant to leave the guest house. Appellant left such guest house on his choice.

22. The permission of the employer granted to the appellant to stay at a guest house of the employer is sufficient allotment of accommodation within the meaning of Rule 3.1 and 3.4 of the HRA Rules of the Company. Appellant, left the guest house voluntarily. Therefore, he became disentitled to receive HRA by reason of his own conduct.

23. Appellant applied for HRA which was considered at a given level of the employer. Administrative approval was accorded. Finance approval was not forthcoming. Appellant was required to apply in the prescribed form which the appellant did.

24. These actions of both the employer and the employee do not vest the appellant a right to receive HRA as the Rules of the HRA disentitles an employee to receive HRA when such employer refuses or surrenders the accommodation offered to him. In the facts and circumstances of this case, appellant was allowed to occupy the guest house on transfer which he voluntarily surrendered within 9 days.

25. ***Mahinder Singh Gill & another (supra)*** is of the view that the additional material cannot be brought on record in order to supplement a decision already taken. The decision must stand or fall on the reasons appearing from the writing which discloses the decision.

26. In the facts of the present case, two letters were challenged by the appellant. Both the letters negated the claim that HRA made on behalf of the appellant. Both the letters contain adequate and valid reasons for non grant of HRA. It refers to the HRA Rules. The authorities stated that, since the appellant was allowed to stay in the guest house and since the appellant voluntarily left the guest house, appellant was not entitled to HRA.

27. The view taken by the authorities as disclosed in the writings denying the claim for HRA, of the employer, is plausible. It draws sustenance from the HRA Rules of the Company.

28. Learned Single Judge considered these aspects of the matter and proceeded to dispose of the writ petition by the impugned judgment and order.

29. In view of the discussions above, we find no ground in the appeal.

30. MAT 1329 of 2022 along with all connected applications are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

31. I agree.

(Md. Shabbar Rashidi, J.)

CHC/Dd