



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

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Date of decision: February 08, 2024

+ W.P.(C) 1838/2024

(53) SRINIVAS GUNDAMUNI

..... Petitioner

Through: Mr. Himanshu Gautam, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Saroj Bidawat, Sr. PC with
Mr. Anirudh Shukla, GP for UOI
with Mr. Rattan Negi,
Deputy Commandant (Law)

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner with the following prayers:

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) Issue a writ, order or direction in the nature of Certiorari quashing orders dated 22.06.2021 and 27.06.2021 by which the NAC and HRA issued to the Petitioner was ceased, respectively*
- b) Issue a writ of mandamus directing the respondents to revive the NAC dated 19.02.2021 as was issued to the Petitioner wef 31.08.2020 till 27.09.2022.*



c) Issue a writ of mandamus directing the respondents to pay the HRA as is due to the Petitioner for the period 31.08.2020 to 27.09.2022

d) Issue a writ of mandamus directing the respondent to compensate the Petitioner for not providing School Bus facility for his children for the period 31.08.2020 till 27.09.2020.

e) Pass any such orders as the Hon'ble Court may deem fit in the light of above mentioned facts and circumstances of the case.”

2. The facts as noted from the petition are that the petitioner on his transfer from Delhi to Krishnapatnam reported for duty at Krishnapatnam on August 31, 2020. However, he was informed about the non-availability of the official accommodation at Krishnapatnam. Resultantly, on February 19, 2021, he was given the Non Availability Certificate ('NAC', for short).

3. It is the case of the petitioner and so contended by his counsel that on March 10, 2021, the petitioner had preferred a letter before the respondents / Authorities thereby requesting the Authorities to grant HRA as the petitioner has not been provided with the government accommodation.

4. It is the case of the petitioner that the NAC dated February 19, 2021 was cancelled by the respondents vide orders dated June 22, 2021 and June 27, 2021, without affording any opportunity to the petitioner and consequently stopped paying HRA as admissible to the petitioner w.e.f. June 01, 2021 by stating the petitioner is unwilling to take the government accommodation.



5. It is his case that the petitioner has been approaching the respondents for restoration of the NAC. He would submit that the petitioner was never unwilling to take the government accommodation. In fact, he had made the request on March 10, 2021, but the same has not been acted upon. Rather, the respondents on the ground that the petitioner is unwilling for the government accommodation have cancelled the NAC which is arbitrary. He do state that since September 28, 2022, the petitioner is living in a government accommodation.

6. On the other hand, Ms. Saroj Bidawat, learned Senior Panel Counsel and Mr. Rattan Negi, the Officer from the respondents would contest the petition by stating that the petitioner at the most is eligible for payment of HRA between August 31, 2020 to May 2021, i.e., the period when the government accommodation could not be allotted to the petitioner, as it was not available. He submits, the HRA for that period has been paid to the petitioner and no further amount is payable.

7. Mr. Negi submits, the plea of the learned counsel for the petitioner that he had applied for accommodation on March 10, 2021, is a misconceived argument. He has drawn our attention to the letter dated March 10, 2021 to state no request for government accommodation was made. He also states that the petitioner could not have asked for a government accommodation as no government accommodation was available in the month of March 2021. It is his case that the government accommodation was available in April / May 2021 but no request was made by the petitioner for allotting government accommodation. Accordingly, the respondents cancelled the NAC and stopped paying the HRA.



8. According to him, as per the instructions, the HRA which was due, has been paid to the petitioner and after June 2021, the HRA has been stopped. He seeks dismissal of the writ petition.

9. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the respondents have rightly cancelled the NAC dated February 19, 2021. The answer has to be in the affirmative. The petitioner cannot dispute that in the month of April-May 2021, when the government accommodation was available, the petitioner had not shown his willingness to avail the same. In the absence of any willingness, the necessary consequence is that the NAC would stand cancelled and even the HRA becomes un-payable. In fact, the respondents stopped paying HRA to the petitioner, w.e.f. June 2021.

10. We have been informed by the Officer that complete HRA has been paid for the period August 31, 2020 to May 2021.

11. We are of the view that the plea of the learned counsel for the petitioner that no willingness was sought from the petitioner in the month of April-May 2021, and as such, he did not apply for the government accommodation and the respondents could not have cancelled the NAC, is a misconceived argument. It is clear from the very communication dated September 16, 2022 of the petitioner wherein in paragraph 2 he stated that *“Further, I was asked for willing / unwilling for newly commissioned CG Married accommodation at Nelatur in the month of Apr / May 21, during that time I was the only SO whose ward was studying in KV School.....”*

12. The aforesaid statement of the petitioner would reveal that he was given an option for taking a married accommodation which he



refused because his children were studying in a School in Nellore. So, it must follow that the petitioner having not opted for married accommodation, could not have paid the HRA. The resultant effect is also that the NAC was required to be cancelled, which the respondents did through their impugned communications.

13. Learned counsel for the petitioner would also state that NAC could be cancelled only if the government servant shows his unwillingness to take government accommodation, on two occasions. We are not in agreement with the said plea for the reason that the guidelines clearly stipulate that refusal to take government accommodation, twice, shall result in the cancellation of accommodation roster. It is not such a case here, where the accommodation roster of the petitioner has been cancelled.

14. We dismiss the petition making it clear, if the complete HRA for the period August 31, 2020 to May 2021 has not been paid to the petitioner, the same shall be paid within a period of four weeks from today.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

FEBRUARY 08, 2024/aky