

WP(C) 1035/2007

BEFORE

THE HON'BLE MR. JUSTICE RANJAN GOGOI

THE HON'BLE MR. JUSTICE B.P. KATAKEY

[Katakey, J.]

This writ petition is directed against the order dated 16.12.2005 passed by the learned Vice Chairman, Central Administrative Tribunal, Guwahati Bench in OA No.230/2004 holding that the respondents/original applicants are entitled to get House Rent Allowance (in short HRA) at the rate applicable to 'B' class cities as per the 4th Pay Commission recommendation up to 03.10.1997 and directing the writ petitioners to consider the question of applicability of Clause-3 of the office Memorandum dated 03.10.1997 issued by the Joint Secretary to the Government of India, Ministry of Finance (Department of Expenditure), and to pass appropriate orders thereon within a period of 4(four) months from the date of receipt of the said order and further to ascertain the rate applicable to 'B' class cities as per the 4th Pay Commission report with further direction that if, on verification, it is found that the present respondents (applicants in the OA) were paid at the rates applicable to 'B' class cities as per the 4th Pay Commission report, there shall be no question of recovery and on the other hand, if the rate as per the 4th Pay Commission report effective from 01.10.1986 is less than what is paid, then with a further direction not to recover any amount from the respondents, as, such amount was not paid to them on the basis of any misrepresentation or fault on their part. It has further been directed by the said order that if Clause-3 of the office Memorandum dated 03.10.1997 existed and continued, then the respondents shall be entitled to get higher rate of HRA and the same shall be paid to them without delay.

2. The respondents herein filed a writ petition before the Kohima Bench of this Court, which had been registered and numbered as WP(C) No.149(K)/2002 challenging the communication dated 14.01.2002 issued by the Desk Officer, Government of India, Ministry of Home Affairs to the Director, Intelligence Bureau, Ministry of Home Affairs, conveying the sanction of the President for recovery of Rs.4,03,708/- on account of the overpaid amount of HRA from March, 1991 to September, 1997 and also the consequential Memorandum dated 31.01.2002 issued by the Assistant Director to that effect, with a further prayer to direct the respondents therein (the writ petitioners) to allow them to draw the HRA at the rate applicable to 'B' class cities w.e.f. 01.03.1991 along with arrear. The said writ petition was subsequently transferred to the learned Tribunal vide order dated 07.09.2004 as the Tribunal had the jurisdiction to decide the issues raised in the said writ petition and accordingly the same has been registered and numbered as OA No.230/2004.

3. The respondents herein, who are working in Subsidiary Intelligence Bureau (in short SIB) in Nagaland, have filed the said application contending that they being entitled to HRA at the rate applicable to 'B' class cities, since Nagaland is treated as 'B' class city, were paid such HRA at the rate applicable to 'B' class cities till issuance of the order of recovery and they shall continue to be entitled to HRA at the said rate, in view of Clause-3 of the Office Memorandum dated 03.10.1997, even though the 5th Pay Commission recommend Kohima and Dimapur in the State of Nagaland for classification as 'C' class cities, which has been accepted by the Govt. of India and as such the orders for recovery cannot be sustained in law. In the written statement filed, the present writ petitioner contended that the respondents are entitled to HRA only at the rate applicable to general category and they are being paid HRA at the rate of 7.5%, which is continuing by virtue of the order dated 03.10.1997 passed by the Government pursuant to the 5th Pay Commission report treating Kohima and Dimapur as 'C' class cities. It has further been contended in the said written statement that since by misinterpretation of the order passed by the Tribunal dated 22.08.1995 in OA No.37/1995, HRA at the rate applicable to 'B' class cities was paid, the orders for recovery of such excess payment from March, 1991 to September, 1997 has been paid.

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4. The learned Tribunal upon hearing the learned counsel for the parties and on appreciation of the materials available on record passed the impugned order, as noticed above, and hence the present writ petition.

5. We have heard Mr. R. Sharma, the learned Asstt. Solicitor General of India appearing for the writ petitioners. None appeared on behalf of the respondents.

6. It has been contended on behalf of the writ petitioners that though the respondents herein were entitled to HRA at the rate of 7.5% i.e. the rate applicable to 'C' class cities in terms of the recommendation of the 4th Pay Commission and at the same rate as per the office Memorandum dated 03.10.1997 issued after acceptance of the recommendation of the 5th Pay Commission, since by mistake they were paid the HRA at higher rate applicable to 'B' class cities, it necessitated issuance of the impugned orders for recovery of excess amount paid. It has further been contended that the decision of the Apex Court dated 18.02.1993 in Civil Appeal No.2705/1991 (Union of India & ors. Vs. Shri S.K. Ghosh & ors.) being in respect of the employees of P&T Department, the benefit of the said judgment cannot be extended to the employees working in SIB in the State of Nagaland.

7. The contention of the respondents herein before the learned Tribunal was that they are entitled to HRA at the rate applicable to 'B' class cities as, Kohima and Dimapur in the State of Nagaland in which they are working, were classified as 'B' class cities by virtue of the 4th Pay Commission report, which has been accepted by the Government of India. According to them though pursuant to the 5th Pay Commission report, Kohima and Dimapur were subsequently classified as 'C' class cities, by virtue of Clause-3 of the office Memorandum dated 03.10.1997, they are entitled to receive the HRA at the rate applicable to 'B' class cities, since no further orders in that regard has been passed by the Government of India as stipulated in the said office Memorandum. It was the further contention of the respondents herein that the Apex Court in Civil Appeal No.2705/1991 having held that the employees of P&T Department, based in Nagaland, are entitled to HRA applicable to 'B' class cities, they being the employees of the Govt. of India are also entitled to the benefit of the said judgment.

8. The Apex Court in Civil Appeal No.2705/1991 (Union of India & ors. Vs. Shri S.K. Ghosh & ors.) vide order dated 18.02.1993 while considering the claim of Group-C and D employees of Postal & Telecommunication Department posted in the State of Nagaland claiming HRA at the rate as admissible to the employees posted in 'B' class cities, referring to the Presidential order dated 08.01.1962, had held that those employees are entitled to HRA at the rate which had been prescribed by the 4th Pay Commission recommendations for 'B' class cities w.e.f. 01.10.1986. It is not the case of the writ petitioners herein that the said Presidential order dated 08.01.1962 granting HRA, to the P&T staff posted in the State of Nagaland, at the rate applicable in 'B' class cities has been withdrawn. The similarly placed employees having been allowed the HRA at the said rate, the same cannot be denied to the respondents herein, they being posted in the State of Nagaland.

9. It also appears that some of the present respondents earlier approached the learned Tribunal in OA No.279/1997 claiming that they are entitled to HRA at the rate applicable to 'B' class cities w.e.f. 01.03.1991, which was disposed of by the learned Tribunal vide order dated 31.05.2001 allowing the said prayer in terms of the earlier order of the learned Tribunal dated 22.08.1995 passed in OA No.37/1995 and batch. The said order dated 31.05.2001 was passed as agreed to by the parties that the applicants are entitled to such claim, in view of the order dated 22.08.1995 passed in OA No.37/1995 and batch. By the order dated 22.08.1995 passed in OA No.37/1995 and batch, the learned Tribunal has held that the

applicants therein are entitled to HRA at the rate applicable to the Central Government employees in 'B' class cities w.e.f. 01.03.1991 onwards and they shall be paid accordingly. The said orders of the learned Tribunal have not been challenged by the present petitioners, who were the respondents therein, in the higher forum.

10. Since the present respondents, who are posted in Kohima and Dimapur in the State of Nagaland, are entitled to the HRA at the rate applicable to the employees in 'B' class cities, they are to be paid HRA in the same rate, in view of Clause-3 of the office Memorandum dated 03.10.1997, until further orders are passed by the Central Government in that regard. For better appreciation Clause-3 of the Office Memorandum dated 03.10.1997 is reproduced below:-

3. The cities/towns which have been placed in a lower classification in the above mentioned lists, as compared to their existing classification shall continue to retain the existing classification until further orders and the Central Government employees working therein will be entitled to draw the rates of CCA and HRA accordingly.

11. The learned Tribunal, apart from holding that the respondents herein are entitled to HRA at the rate applicable to the 'B' class cities, in the absence of any material on record relating to the passing of any order by the Central Government in terms of Clause-3 of the Office Memorandum dated 03.10.1997, has also directed the writ petitioners to consider the question of applicability of Clause-3 of the office Memorandum dated 03.10.1997 in the case of the respondents herein and to pass necessary orders thereon within a period of 4(four) months, with further direction that there should not be any recovery, even if it is found that they were paid the HRA more than to which they are entitled to, after 03.10.1997, as such payment was not made due to misrepresentation on the part of the present respondents. The further direction has also been issued directing that if it is found that Clause-3 of the office Memorandum dated 03.10.1997 still existed and continued, in the case of the present respondents, then they shall be entitled to get higher amount of HRA and accordingly they shall be paid the same. Such findings and directions, in view of the aforesaid discussion, have rightly been recorded and issued by the learned Tribunal, which requires no interference.

12. The writ petition, therefore, stands dismissed. No cost.