

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 517 OF 2014

Dr. Umesh Mishra,
Professor,
son of late Prof. Lingaraj Mishra,
Department of Civil Engineering and Ex-CVO,
NIT, Agartala, Tripura (W),
PIN-799046.

...**Petitioner**

- Vs -

1. National Institute of Technology,
Agartala (represented by the Director)
PO- Formerly TEC, Barjala,
Jirania, Tripura (W),
PIN-799046.

2. Board of Governors,
NIT, Agartala (represented by the Chairman,BOG)
PO-Formerly TEC, Barjala,
Jirania, Tripura (W),
PIN-799046.

3. The Chairman,
Board of Governors,
NIT, Agartala (the notice upon him may be served
in the following address)
Dr. Deepak B. Pathak, Chair, Professor,
Dept. of CSE, Kanwal Rekhi Building,
IIT, Bombay, Powai, Mumbai,
Maharashtra 400076

4. The Union of India,
represented by the Secretary,
Ministry of Human Resource Development
Shastri Bhawan, C-Wing, Dr. Rajendra Prasad Road,
New Delhi-110001.

5. The Registrar in Charge,
NIT, Agartala,
PO-Formerly TEC, Barjala,
Jirania, Tripura (W)
PIN-799046.

...**Respondents**

**BEFORE
THE HON'BLE MR. JUSTICE S.TALAPATRA**

For the petitioner	: Mr. K.N. Bhattacharjee, Sr.Advocate. Ms. S. Chakraborty, Advocate.
For the respondents	: Mr. Biswanath Majumder, C.G.C.

Date of hearing : **27.11.2017**

Date of delivery of
Judgment and order : **28.02.2018.**

Whether fit for reporting : **Yes**

JUDGMENT & ORDER

By means of this writ petition the petitioner has urged this court for quashing the memorandum F.No.NITA.2.1(246-Estt.)/2008/6423-26 dated 20.09.2013 [Annexure-11 to the writ petition] refusing to grant double House Rent Allowance (HRA in short) and for directing the respondents to allow the petitioner his home town HRA as well as the HRA in the place of his posting, known as double HRA w.e.f. 03.10.2008 when the petitioner had joined the National Institute of Technology, Agartala as a Professor in the Department of Civil Engineering on lien from the previous organization namely Biju Pattnaik University of Technology (in short, BPUT), Bhubaneswar, a Technology Institute of Government of Orissa.

2. The petitioner has further urged this court to quash the decision contained in the letter dated 02.06.2014 [Annexure-40 to the writ petition] written by the Director, NIT Agartala whereby the petitioner was advised to apply for the leave for the period of absence from 11.07.2013 to 19.08.2013 so that the absence can be regularized. In this regard, the petitioner has further urged this court to treat the Note No.51 of the Director, NIT Agartala, dated 01.10.2013 [Annexure-38 to the writ petition] as final and as corollary thereto, the petitioner has further urged to declare that he is entitled to his full salary and HRA with interest for the period

of availing the DBTs National Associateship Awards and to treat the period of Associateship as on deputation, instead of leave out of his credit. Since the period from 01.07.2013 to 19.08.2013 has not been regularized as yet, the petitioner's salary has been held up by the respondents and in this context the petitioner has further urged this court for directing the respondents to release the leave salary and pension contribution relating to the petitioner to his previous employer, BPUT, Bhubaneswar with interest for the overdue contribution as per FR 119.

3. The petitioner who was employed earlier in BPUT, Bhubaneswar has been appointed as the Professor in the NIT Agartala in terms of the offer of appointment under No.F.NITA-2(224-Estt.) 2008/2273 dated 25.07.2008. According to the petitioner, he was released from BPUT, Bhubaneswar by the memorandum dated 29.09.2008 and joined the NIT Agartala on 03.10.2008.

4. The NIT Agartala being a Central Government Institution is guided by the policies and the rules of the Central Government in respect of salary, HRA, LTC etc. The petitioner has averred in the writ petition that the Central Government employees from outside the North Eastern Region is posted in the region and maintain their families in the rented houses or in their own houses at the last place of posting outside the North Eastern Region, they are be entitled to HRAs admissible to them at the old rate and also at the rate admissible at the new place of posting in case they live in the hired private accommodation irrespective of whether they have claimed transfer TA for family or not, subject to the condition that the hired private accommodation or owned house at the last

station of posting is put to bona fide use of the members of the family. In this regard, the office memorandum being OM No.2(38)/2001-EII(B) dated 24.09.2003, OM No. 2(13)/2008-EII(B) dated 24.08.2008 and OM No.11016/1/EII(B)/84 dated 29.03.1984 issued by the Department of Personnel and Training, Government of India have been relied from the Swamy's Hand book 2010 to show that the petitioner is entitled to two HRAs.

5. To illustrate the case further, in Para 3 of the writ petition the petitioner has averred that double HRAs or two HRAs were provided to Professor P.K.Bose, former Director, NIT Agartala in terms of the said rules and guidelines. Professor Bose used to get 30% of his basic pay as his old station/home station HRA in addition thereto he was getting HRA @ 10% of his basic pay for residing at his working place at Agartala according to the Central Govt. guidelines for N-E Region States. The petitioner also got disclosure in terms of his application dated 29.01.2014 under Right to Information Act, 2005 wherefrom it has clearly transpired that Professor Bose was provided with the benefits of the double HRAs [see the reply dated 24.03.2014, Annexure-4 to the writ petition]. The petitioner, therefore, has contended that he is also entitled to double HRA as per the Central Government's rules and guidelines but the respondents have denied him the said benefit. However, he has admitted that he has been given one HRA as per rules as the petitioner has preferred not to stay in the quarters. The petitioner has admitted that he has been requested by the NIT Agartala to stay in the designated quarters which is available to accommodate him. In the event of failure of his occupying the designated quarters, the HRA that the petitioner is drawing would be

discontinued. The petitioner, however, by the reply dated 17.05.2013 has stated that the petitioner is entitled to Type-VIA quarters but the petitioner was allotted Type-V (H5 Flat) quarters which is not according to his position. Thereafter, however, the respondents did not insist inasmuch as in accordance with the Govt. of India rules, the petitioner is entitled to the Type-VIA quarters. The petitioner has further submitted that the NIT Agartala has not been declared as a totally residential institute for the faculties or other non teaching executives. The Petitioner has categorically informed the respondents that he is still occupying the accommodation in Bhubaneswar and staying there and thus he would be entitled to the double HRA. All the relevant facts were laid to the Registrar (In-charge), despite that he was refused the double HRA by the letter dated 06.05.2013 issued by the Registrar (In-charge) NIT, Agartala [Annexure-6 to the writ petition]. The petitioner had responded to the said letter on 17.05.2013 [Annexure-7 to the writ petition] by placing information that the petitioner had received by the disclosure letter dated 24.03.2014 [Annexure-9 to the writ petition]. The petitioner had time and again tried to impress the Director for making payment of the double HRA, but nothing positive has yielded from such persuasion. By the memorandum dated 20.09.2013 [Annexure-11 to the writ petition] the Registrar (In-charge) NIT, Agartala had clearly communicated their decision which reads as under:

"Dr. Umesh Mishra, Professor, Dept of Civil Engg. for granting two HRAs was examined but found not admissible."

According to the petitioner the Registrar (In-charge) does not hold such authority to communicate such decision. The petitioner has averred quite abundantly of disclosure of the

relevant information that he had received by pressing the application dated 20.09.2013 under the Right to Information Act, 2005. The petitioner sought disclosure in respect of the approval of the competent authority vis-à-vis the memorandum No.F.NITA.2.1(246-Estt.)/2008/6423-26 dated 20.09.2013, but no such disclosure has been made and as consequence thereof, the petitioner had sent a notice on 26.09.2014 through one Advocate [Annexure-13 to the writ petition] requesting further for release of double HRA @ 20% of his basic pay from day of his joining i.e. 03.10.2008 with interest and for continuance of payment of double HRA as per the Central Government's rules. The respondents were asked to redress the demand within 30 days, else the appropriate action at law would be followed.

6. So far the other relief is concerned, in respect of the period of absence, the petitioner has averred that being attracted by an advertisement of Department of Bio Technology (DBT in short) for National Associateship Award 2012-13 for North East Scientists under the Ministry of Science & Technology, Govt. of India in the website, he had applied for the said National Associateship Award on 14.02.2012 in the prescribed format and that was forwarded by the Director, NIT Agartala with an undertaking, according to the petitioner, that in case the petitioner is selected he would be granted deputation leave of 3 months for availing the Associateship. Thereafter by the Office order dated 02.01.2013 the petitioner was selected for National Associateship of DBT for a period of 3 (three) months to be availed within a year of publication of the selection order for the award. So far the factual matrix is concerned there is no dispute. The petitioner had

duly informed about his selection and requested to release him on making alternative arrangement for the period when he would be doing Associateship in Indian Institute of Technology, Delhi. But no response was given to the petitioner. Thereafter the petitioner had submitted another application on 07.03.2013 [Annexure-18 to the writ petition] to the Registrar, NIT Agartala proposing his deputation from 15.04.2013 to 15.07.2013 and requesting him to relieve him from 13.04.2013 to join the said programme under supervision of Dr. T.R. Sree Krishnan, Dept of Biotechnology, IIT Delhi who gave his consent to take the petitioner. Even that time also, there had been no response. On 23.03.2013, petitioner made a further application to the Chairman, Board of Governors, NIT Agartala through the proper channel for the proposed "leave" on deputation for purpose of carrying out the advanced research in the interest of the public during the period from 15.04.2013 to 15.07.2013 which had also included the summer vacation for one month and 20 days. By the office memorandum dated 22.03.2013 [Annexure-20 to the writ petition] the petitioner was informed that his prayer had been considered by the competent authority but could not be acceded to. Again the petitioner made another application on 26.03.2013 stating that his prayer required further consideration so as to arrive at a definite decision. The petitioner had urged to convey him the clear decision by March of 2013, but the petitioner got no reply. However, the petitioner has stated that since there was no reply, he presumed that his prayer was "exceeded to". On 22.04.2013, the petitioner of his own had executed a bond on non judicial stamp binding himself to the BCIL, New Delhi. But he had deferred his programme for about one

month i.e. 20.05.2013 to 19.08.2013 due to rescheduling of the academic calendar and the end term examination for the purpose of 5th convocation in NIT Agartala. The petitioner had communicated proposed date to the DBT and BCIL as per terms and conditions for booking the air ticket by BCIL for the petitioner and other formalities. On 13.05.2013, the petitioner made a further application to the Director, NIT Agartala seeking station leave permission during the summer vacation 2013 for his deputation from 20.05.2013 to 19.08.2013 by rescheduling the previous proposed period of the DBT National Associateship and by giving reasons for his rescheduling with the consent of the mentor/supervisor. The said application dated 22.04.2013 by which the petitioner had sought the station leave permission [Annexure-22 to the writ petition] according to the petitioner, was not attended to but the petitioner on his own volition has made the alternative arrangement etc. The petitioner has averred in Para 14 of the writ petition as under:

"14. That the petitioner also informed the HOD, Civil Engg. regarding his deputation period for availing the DBT Associateship and submitted the class arrangement document from 15.07.2013 to 17.08.2013 (after summer vacation) taking the consent from the concerned faculties. The petitioner also handed over the official charge of the lab (for which he was responsible) to the faculty after taking consent from the HOD. In the entire procedure the petitioner has done nothing which can be treated as unbecoming of a Government Servant with reference to CCS CCA rule 1965."

7. That time also the petitioner did not receive any reply from the NIT Agartala in response to his applications dated 26.03.2013 and 13.05.2013. He was not given any decision against his going out on deputation. On the other hand as the Director NIT Agartala had given the undertaking while forwarding his application

to the DBT, the petitioner, in good faith, believed that there was no impediment in joining the said Associateship for availing the award. On such assumption, the petitioner had proceeded to commence his DBT National Associateship. The petitioner had also served the bond mentioning that he would serve North-East Region for one year after completion of his Associateship. The petitioner has admittedly without any approval from the competent authority joined IIT, Delhi and submitted his report to BCIL duly forwarded by his Supervisors on 22.05.2013 [Annexure-27 to the writ petition].

8. The petitioner had commenced his work under the supervision of Professor T.R. Sree Krishnan and Prof. Gopal Agarwal in the IIT Delhi, the host institute. In this regard, the petitioner has mentioned the Office Memorandum No.60/43/64-Ests(A) dated 24.08.1965 issued by the Department of Personnel and Training, Govt. of India which provides that once the administrative authority forwarded an application, it is mandatory that the Govt. employee concerned should be released to take up the new appointment. However, where subsequent to forwarding of the application, but before selection, if exceptional circumstances arise in which it may not be possible to release the official, the fact should be communicated to the 'Commission' as well as to the official concerned.

It is really difficult to gather why the said Office Memorandum dated 24.08.1965 [Annexure-28 to the writ petition] has been relied inasmuch as the contextual reference is entirely different.

9. The petitioner continued the Associateship according to the terms and after completion, he submitted the report to the BCIL and returned to his place of posting at the NIT Agartala with formal release order from IIT Delhi. On 20.08.2013 the petitioner resumed his duties in NIT Agartala and requested to make payment of his salary from 01.07.2013 which was held up arbitrarily, illegally and without any information. The petitioner was however allowed to resume his normal duties in the National Institute of Technology. But on 04.09.2013, the Registrar (In-charge), NIT Agartala [Annexure-36 to the writ petition] had informed that the salary of the petitioner had been stopped as a token of punishment due to his conduct which was unbecoming of a Government Servant as he had left the institute without the formal release order. The petitioner has asserted that no release order was required by IIT Delhi, BCIL and DBT for joining the Associateship. The Registrar (In-charge) had however insisted that the petitioner's salary would be released if the petitioner applied for leave out of his credit for the period from 11.07.2013 to 19.08.2013, the period which the petitioner was doing Associateship after the summer vacation. The petitioner had submitted a representation on 11.09.2014 and contested the said decision but by the office order dated 18.08.2013, the Registrar (In-charge) had apprised him that *"it has been decided by the Institute that his salary for working period w.e.f. 20.08.2013 onwards may be released. Further, for the release of his withheld pay for the remaining period from 11.07.2013 to 19.08.2013 need to be regularized."* The petitioner has admitted that he was getting his salary from 20.08.2013 as usual and he does not have any

grievance for the said period. But for the period from 01.07.2013 to 10.07.2013 he was not given his salary even though it was communicated that the salary for the said period would be released. The petitioner on 01.10.2013 met the Director, NIT, Agartala. After a long discussion, the Director, NIT Agartala had given his decision in File No.2.1(246-Estt)/08 in Note No.51 which the petitioner received by disclosure under the RTI Act. In the said note the Director, NIT, Agartala has observed as under and in this regard there is no dispute:

"Now to resolve this issue once for all and in the academic ambience in the institute, the following actions are approved:

- i. Ex-post facto sanction for his period of absence and to be considered as deputation.*
- ii. His salary and HRA for deputation period also to be released.*
- iii. It is requested no more correspondence in this issue to be entertained.*
- iv. His area of research and research schemes are the need of the day and to be encouraged.*
- v. All his claims to be settled on priority without any prejudice etc.*
- vi. His period of absence 11th July 2013 to 19th Aug 2013 is regularized with all claims and salary from 1st July to be released and HRA from 1st May as per Government Norms. The said note is available at Annexure 38 to the writ petition."*

10. The petitioner, based on that note, persuaded for the release of the said arrear salary and the HRA. But the Director's observations were not acted upon. Finally, the Director, NIT made a communication to the petitioner on 02.06.2014 [Annexure-40 to the writ petition] advising the petitioner to apply for leave for the period from 11.07.2013 to 19.08.2013 in order to regularize his absence. In Para 30 of the writ petition, the petitioner himself has averred as under:

"30. That in fact during the above mentioned period the petitioner performed his duties in IIT, Delhi and the day to day attendance and research work have been recorded there as a National Associate with reference to the terms and conditions of the Dept. of Biotechnology, Govt. of India and for which he has received the scholarship amount every month from GOI. Hence, the mentioned period cannot be treated as period of leave/absence from duty as per GOI rules and laws."

11. Finally, the petitioner had sent the notice demanding the reliefs as stated above. Even after receipt of the said notice of demand dated 26.09.2014 [Annexure-41 to the writ petition] the petitioner's salary of the said period has not been released. The petitioner thereafter pursued for the double HRA and for this purpose he has submitted the records showing the payment that he has made as the pension contribution, leave salary to BPUT. The petitioner had also submitted his release order dated 01.10.2008 from BPUT during his joining. But the NIT Agartala did not deposit his leave salary and pension contribution as per the Govt. of India's guidelines. Finally, the petitioner has filed this writ petition.

12. The respondents have seriously disputed the claim of the petitioner and contended by filing the reply on 04.07.2015 that the petitioner is not entitled to the reliefs as prayed in the writ petition.

13. So far the illustration as provided by the petitioner in respect of Professor P.K.Bose, the respondents in Para 6 of their reply has categorically admitted and stated that Professor P.K.Bose while serving as Professor in Jadavpur University, Kolkata was appointed by the Ministry of Human Resource Department on tenure basis not on regular basis for a period of 5 years as the Director, NIT Agartala. The Board of Governors (BOG) of NIT

Agartala, as per recommendation of the Finance Committee, in their 15th meeting which had been held on 12.06.2011 allowed Professor Bose 30% HRA for keeping his family at Kolkata and further, Professor Bose was allowed 10% HRA for staying at Agartala till he occupied a rent-free residence in the campus. The respondents have categorically averred that the writ petitioner was not entitled to second HRA or double HRA as he is the direct recruitee at NIT Agartala and he is entitled to 10% HRA. Accordingly, HRA is released to the petitioner regularly. So far the letter dated 06.05.2013 is concerned, the respondents have stated that the same was issued in terms of the Note No.130 dated 03.05.2013 [Annexure-R/4 to the counter affidavit] and as such the Registrar (In-charge) had the due authority to issue such letter. As regards the National Associateship under DBT, the respondents in Para 11 of their reply have stated that the Director, NIT, Agartala signed the portion of the statement printed for the employer at the bottom of the prescribed form. However, the way the petitioner has interpreted the said statement does not tally with the statement signed by the Director, NIT Agartala.

14. The respondents have categorically stated that the petitioner was never allowed to go for deputation for the said Associateship. In furtherance to their statements made in the reply, the respondents have stated that the release order from his previous employer is in no manner material for the present purpose.

15. In short, the contentions of the respondents are that (a) the appointment of the petitioner as a Professor in NIT Agartala

is not a posting on transfer or otherwise but is a substantive appointment on regular basis in NIT Agartala. Prior to that appointment or thereafter, the petitioner was never promised to be provided with double HRA, meaning to retain the HRA the petitioner was getting from previous employer and to get the further HRA for his appointment in the NIT Agartala, (b) the absence for the period from 11.07.2013 to 19.08.2013 was not regularized since the petitioner left for the Associateship without approval of the respondents. However, the respondents have agreed that such absence can be regularized if the petitioner applied for regularization by leave credited in his account. But the petitioner despite that advisory did not apply for such leave.

16. In Para 21 of the reply, filed by the respondents, it has been averred as follows:

".... the writ petitioner applied on 21.09.2013 for forwarding of his application for DBT abroad Associateship addressed to the Chairman, BOG. The writ petitioner was Director (I/C) from 29.9.2013. On 30.09.2013 the writ petitioner called his personal files. On the same day on 30.09.2013 the writ petitioner ordered on the top of his application dated 21.09.2013 to SO (Estt) to process the file. The SO (Estt) processed the file on 1.10.2013. Below the SO's and Registrar's notes, the Director recorded his decision as strongly recommended and approved. And endorsed the note to Dean (FW), Dean (FW) endorsed the note in turn to the Registrar. Registrar (I/C) endorsed the file to the Dean (Administration) on 04.10.2013. The Dean (Administration) endorsed the file to the Registrar (I/C) for "N.A. Please". Registrar (I/C) submitted the file to the Chairman, BOG. The Chairman, BOG observed as follows:

"Any letter should be addressed to the Director through proper channel. The HOD of the respective Department should mention that the academic activities would not suffer and the Department could manage academic activities in his absence."

So, the writ petitioner might have seen the file as above. However, the permission to join abroad Associateship w.e.f. 01.03.2015 was issued vide OM dated 16.02.2015 as scheduled by the Government of India."

17. The said Associateship as it appears from the reply of the respondents was a different Associateship, but no controversy has been raised in the writ petition in respect of the said Associateship. The Bio-Technical National Associateship under the DBT was a different Associateship and the petitioner was not granted any approval after his selection by the competent authority at the NIT Agartala.

18. The petitioner, however, filed a rejoinder and reiterated his contentions by stating that a strong discrimination is being made in respect of the petitioner. The petitioner has also insisted that in the meeting of the Board of Governors, the issue of regularization of the said absence of the petitioner was never discussed and therefore no point could be raised in that meeting regarding the adjustment of his leave as a token of punishment. The petitioner has again insisted on the Note No.52 (though in the copy annexed in the writ petition it shows that it is note no.51) in support of his contention. In Para 11 of the rejoinder, the petitioner has further averred as under:

"11. That regarding Para 18-20 of the counter affidavit I rely upon my statement made in Para 21 to 26 of the writ petition. Since my application was forwarded by the Director NITA with the said undertaking, "Dr. Umesh Mishra if selected for the award of the Associateship, as per the term and condition of the award, shall be granted deputation leave for availing the Associateship" and so I was not required to avail my leave out of leave in credit for any part of period I spent on deputation/duty leave for availing the DBT National Associateship as the statement by NITA that I

should apply for leave from out of credit is wrong and illegal."

19. With leave of the court the respondents No. 1, 2, 3 and 5 have filed an additional affidavit in response to the rejoinder filed by the petitioner on 28.04.2016. In the said affidavit the respondents have asserted that the MHRD letter dated 11.12.2011 as relied by the petitioner for deputation and foreign service cases for Central Govt. organization is not applicable in the case of the petitioner. Further, they have asserted that the benefit of two HRA or double HRA is admissible to those employees who on their 'transfer' keep the families in the previous station in their own/hired accommodation after vacating the Govt. accommodation due to the transfer to the NE Region etc. in terms of OM No.2(38)/2001-EII(B) dated 24-09-2003. But the petition is not covered by the said office memorandum. As incentive for tenure appointment of Professor P.K.Bose, the former Director of NIT Agartala the said arrangement of HRA was made by the Board of Governors. But the petitioner is not a tenure appointee and that such illustration cannot support the claim of the petitioner in any manner.

20. In Para 9 of the additional affidavit, the respondents have averred that the petitioner had left to join the Associateship without approval or any release order. So far the decision of the Director taken on 01.10.2013 [Annexure-38 to the writ petition] is concerned, it has been categorically stated by the respondents in Para 13 of the additional affidavit as under:

"13.That, with reference to the statements made in Para 13,14,15,16,17,18 and 19 of the rejoinder, I say that, the BOG as statutory higher authority, at its 29th meeting

held on 27-02-2014, overruled the decision of Director taken on 01-10-2013."

As such, the note dated 01.10.2013 cannot be pressed by the petitioner to his advantage.

21. Mr.K.N.Bhattacharjee, learned Sr. counsel appearing for the petitioner has submitted that since Professor Bose was given the double HRA, the petitioner is equally entitled to get double HRA as prayed by him. Mr. Bhattacharjee, learned Sr. counsel has submitted that since the denial of pay and allowances of the period of absence of the petitioner is grossly arbitrary and the clarification given in the counter affidavit "is an afterthought", the petitioner is entitled to the reliefs as claimed. Mr. Bhattacharjee has further asserted that from the records produced by the respondents, it would transpire that the petitioner was never communicated that he would not be allowed to join the programme, even though, the petitioner informed the Director 7 days before his joining in the host institute and when after successful completion of the Associateship he resumed his duties and claimed for the salaries for the period as noted, the respondents had taken diametrically opposite position for denying the claim of the petitioner.

22. According to Mr. Bhattacharjee, learned Sr. counsel, the 'executive authority' is empowered by the National Institute of Technology Act and statutes made thereunder to allow the faculties to go outside for training/research programmes and under Section 17(2) of the NIT Act, 2007. Though in the written brief of the statement, it has been referred that the said provision has been placed as Annexure-46, but no such annexure is available with the

records enclosed with the writ petition or the rejoinder filed by the petitioner. However, Mr. Bhattacharjee has reiterated that since at the time of forwarding the application an undertaking was made by the Director, NIT, Agartala that in the event of selection of the petitioner he would be placed on deputation for the said period, subsequently, they cannot resale. Even Mr. Bhattacharjee has relied on the note of the former Director, NIT placed on the file on 01.10.2013 but he has not addressed this court on the stand taken by the respondents that the said note was dissented by the Board of Governors.

Mr. Bhattacharjee has also stated that regarding the adjustment of leave as a token of punishment, no record has been produced by the respondents. As such this court cannot take into cognizance the communication of the Registrar (In-charge) in this regard. Mr. Bhattacharjee has further asserted before the court that in terms of the said note, the office order was awaiting to be issued but Professor P.N.Singh, the successor Director has written in the follow-up note that "place the matter before BOG". Mr. Bhattacharjee has therefore contended that it is surprising as and when the final decision had taken by the Director being the competent authority to sanction the leave for outside training etc. as per the NIT Act and the statutes made thereunder how can be placed for reconsideration by the Board of Governors. But Mr. Bhattacharjee did not dwell upon in respect of wielding of the superior authority by the Board of Governors. The Board of Governors is the supreme authority to say the last words, in accordance with law. Even in that perspective, Mr. Bhattacharjee has urged this court to regularize the period of absence without

any leave as the petitioner had been in the Associateship which was duly approved by the Director, NIT Agartala.

23. From the other side, Mr. Biswanath Majumder, learned CGC has reiterated the stand taken by the respondents in the reply and the additional affidavit and has submitted that by the Memorandum dated 22.03.2013 the prayer of the petitioner dated 18.02.2013 for deputation for a period of 3 months had been considered by the competent authority. But he has further submitted that petitioner left the station without approval of the competent authority. He has categorically contended that by the communication dated 04.09.2013, the petitioner was advised to take leave for the period from 11.07.2013 to 19.08.2013 out of his credited leave to regularize the entire period of absence. But the petitioner without applying for the leave asked the respondents by a notice of demand to regularize that period of absence.

24. Mr. Majumder, learned CGC has contended that the Note No.52 as referred by the petitioner was reconsidered by the Board of Governors and in terms of the decision of the Board of Governors decision dated 27.02.2014, the petitioner was asked to apply for leave out of his credited leave for the period from 11.07.2013 to 19.08.2013 by the communication dated 05.03.2014 and the corrigendum dated 06.03.2014 [Annexure-R/6, R/7 and R/8 respectively to the reply filed by the respondents].

25. Having appreciated the submissions made by the learned counsel for the parties as well as on scrutinizing the records as produced before this court, this court finds that the question emerges for determination is two prompt viz. (a) whether

the petitioner is entitled to get two HRAs and (b) whether the petitioner is entitled to regularization of the period of absence from 11.07.2013 to 19.08.2013 without leave for his participation in the Associateship.

26. The claim for the two HRA's is structured on two OMs. One being the Office memorandum No.2(38)/2001-E.II(B) dated 24.09.2003 the crux of which is compiled in the Swamy's Hand Book (see Annexure-2 to the writ petition) page 35. The said office memorandum dated 24.09.2003 provides that a Central Govt. 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 T.A. 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, Lakshadweep and Ladakh. 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. It has been further clarified that those employees who have not been posted to the N-E. Region from outside are not entitled to this benefit.

27. In the considered opinion of this court this Office Memorandum dated 24.09.2003 as relied by the petitioner to advance the claim for the two HRA's is not at all applicable in the case of the petitioner, inasmuch as the said office memorandum dated 24.09.2003 applies in the cases of "posting" on transfer from outside the N-E Region to the N-E region or the other region as referred in the said office memorandum dated 24.09.2003. The petitioner has not been posted on transfer rather he has been substantively appointed in the post of the Professor in the NIT Agartala. Thus, the petitioner is not covered by the said memorandum inasmuch as this memorandum is a special measure to give benefit to the officers who are transferred to the N-E Region as a special measure.

28. The second decision which has been pressed to nourish the claim of two HRAs is the precedent of providing two HRAs to Professor P.K.Bose, the former Director, NIT Agartala. This court is constrained to say that cannot create a precedent which can be relied for the reason that Professor Bose was never appointed on regular basis in the NIT, Agartala. His appointment was tenure based and contractual in nature. That apart, the Board of Governors in their meeting provide the said benefit considering the specificities of such tenure appointment. This court is constrained to observe that both the grounds as assigned by the petitioner cannot provide any basis in favour of his claim and accordingly, it is held that the respondents have not acted arbitrarily or in defiance to the practice already established in the NIT Agartala.

29. Whether the absence of the petitioner from 11.07.2013 to 19.08.2013 is liable to be regularized without leave as the petitioner had participated in the Associateship with due approval from the Director, NIT, Agartala. The petitioner has submitted that since an undertaking was given that on his selection to the said Associateship he would be placed on deputation. Now the respondents cannot deny regularization of his leave for the said period of absence which is the part of the Associateship. Moreover, the Director, NIT Agartala in its note dated 01.10.2013 had clearly observed that the petitioner's claim to be settled under priority basis without any prejudice. The Board of Governors in the subsequent meeting cannot overturn the decision of the former Director, NIT, Agartala and as such the subsequent decision of the Board is a colourful exercise of power and in contravention to the communication under No.F.8-9/2008-T.S.I, dated 28.12.2011 [Annexure-43 to the writ petition]. The said communication dated 28.12.2011 deals with mobility of faculty and non-faculty personnel to the newly established Central Educational Institutions (CEIs)/Science Institutions and the same has provided relaxation in the conditions governing mobility of such personnel as indicated therein. In short, the said communication provides that the cadre authorities may relax the provisions under the existing recruitment rules and such other rules and orders in order to promote the mobility of the personnel as named in the said communication dated 28.12.2011. On a keen reading of the said communication dated 28.12.2011, this court is constrained to observe that in no manner the relaxation mechanism as prescribed in the said communication dated 28.12.2011 can be treated advantageous to

the petitioner inasmuch the said communication deals with a different subject matter. There cannot be any amount of doubt that before joining the Associateship the petitioner left the institute without any formal release order from the authority concerned. That apart, the petitioner has clearly admitted in the writ petition that he formerly applied for release order in order to join the Associateship. The Registrar (In-charge) of the NIT Agartala by the office memorandum dated 22.03.2013 had clearly communicated that his prayer "could not be exceeded to". In the additional affidavit the respondents also have clearly admitted that the word "exceeded" was a mistake. It meant to be "acceded to" but before the corrigendum could be issued the petitioner had left the NIT Agartala for joining his Associateship. The Petitioner in Para 13 of the writ petition has further admitted that since he did not get any reply, he presumed that his prayer was accepted and he proceeded to join the Associateship. This is no doubt a strange logic. The petitioner hence had admitted that the authorities clearly debarred him from joining the said Associateship but defying the said decision and without any formal order of release he had ventured at his own risk to join the Associateship. What this court finds from the record is that despite such defiance, no action against the petitioner has been taken. On the contrary while overturning the decision of the former Director, NIT, Agartala as reflected in the note dated 01.10.2013 it has been observed that the petitioner may take leave for the said period of absence out of the credited leave. This court deprecates the conduct of the petitioner as a person who is holding the position of a Professor in the National Institute of Technology. This sort of act cannot get approval from

this court. Nobody can be allowed to take a ride on the mechanism put to enforce the discipline in the institute. As such, this court does not find any substance in the submission made for the petitioner and as such prayer for regularization of absence without leave as insisted by the petitioner cannot be entertained.

30. Having observed thus, this writ petition stands dismissed.

31. Before parting with the records, it is observed that if the petitioner is still entitled to the pay and allowances for any part of the Associateship except that period of absence from 11.07.2013 to 19.08.2013 which may be regularized by the respondents from the credited leave on the prayer of the petitioner, the pay and allowances of such period shall be released to the petitioner within 30 days from the date when the petitioner shall submit a copy of this order to the respondent No.2 or the Registrar, NIT, Agartala.

32. There shall be no order as to cost.

JUDGE