(2010) 12 DEL CK 0201

Delhi High Court

Case No: CM No"s. 22182-183 of 2010 and W.P. (C) No. 8733 of 2010

Bagh Daman Singh		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: Dec. 24, 2010

Citation: (2011) 178 DLT 79 : (2012) 2 SLJ 392

Hon'ble Judges: J.R. Midha, J; Gita Mittal, J

Bench: Division Bench

Advocate: Anuj Aggarwal and Gaurav Khanna, for the Appellant; Rajiv Ranjan Mishra and Alok Shukla for Sunil Kumar, CGSC, for the Respondent

Final Decision: Allowed

Judgement

Gita Mittal, J.

CM Nos. 22182-181/2010

1. Allowed, subject to just exceptions.

2. The applications stand disposed of.

W.P.(C) No. 8732/2010

1. The Petitioner while posted with the Group Centre of the Central Reserve Police Force ("CRPF" hereafter) was attached with the Directorate General of the CRPF at Delhi between 8th September, 2008 and 8th October, 2010. He was thereafter relieved from the Group Centre and permanently posted at Directorate General, CRPF, Delhi. The Petitioner points out that by an order dated 7th October, 2009, he was granted permission to temporarily stay out of official accommodation on the condition that he shall not claim house rent, transport or any other allowance. However, such denial to other similarly placed persons was challenged in writ petitions which were allowed. The Petitioner has,

therefore, filed the present petition claiming entitlement to Transportation Allowance ("TPT" hereafter) and House Rent Allowance ("HRA" hereafter) in terms of the applicable rules.

2. The Petitioner has premised his entitlement on the judgment passed by this Court in WP(C) No. 7582/2009 titled Jayasankar M.N. v. Union of India and Ors. and other decisions of this Court. It is noteworthy that the Petitioner has made representations placing his entitlement and claim before the Respondents on 9th October, 2010. The writ petition has been filed for the reason that the Respondents have failed to consider the Petitioner"s request or to pass an order thereon.

3. So far as Jayasankar M.N. v. Union of India and Ors. was concerned, he had filed W.P.(C) No. 7582/2009 for the reason that in March 1999, the Petitioner was posted to the 94th Bn. but was attached to the Directorate EDP Cell at Delhi.

4. In June 2000, the Petitioner was permanently attached and posted at the Directorate EDP Cell at Delhi. Since attachment and the posting was at Delhi, the Respondents had no problem in releasing HRA and CCA to the Petitioner as per Rules applicable; needless to state, Delhi being a metropolitan city, the two allowances were released as per rates applicable. In August 2003, the Petitioner was issued a promotion-cum-posting order. He was promoted to the post of Inspector and was posted to the 126th Bn. After the promotion-cum-posting order was issued, on 28.8.2003, an office order was issued requiring the Petitioner to continue to serve at the Directorate EDP Cell for a period of 6 months.

5. Under orders passed by the employer, the Petitioner continued to remain at Delhi till 24.9.2007, when formal orders relieving him from Delhi were issued. But, HRA and CCA benefit was denied with effect from 10.9.2003. Various representations made by the Petitioner were rejected necessitating the filing of the writ petition.

6. The court held as follows:

3. The issue raised by the writ Petitioner is squarely covered, if not by the decision dated 15.5.1995 disposing of WP(C) No. 308/1994, at least the decision dated 26.10.2003 disposing of WP(C) No. 7391/2001.

4. The issue pertains to release of HRA and CCA to the Petitioner.

5. Similar issue was raised in the two earlier writ petitions and the decision in both was in favour of the two writ Petitioners.

6. Pertaining to the stand taken by the Respondents that where the employee, on transfer-posting, is posted to a Unit outside Delhi, but remains attached to the Headquarters, no HRA or CCA is payable, in WP(C) No. 7391/2001 it was observed as under:

We find no substance in the stand taken by Respondent No. 2 which represents his persistent though useless effort to resort to technicalities. It goes without saying that Petitioner was attached to the Control Room of the Home Ministry under the orders of Respondents and he continues to remain so attached till date. His transfer on paper to Rampur along with his 8th Bn. may be dictated by administrative convenience but that does not detract from the fact that he was admittedly discharging his duties at Delhi due to his attachment there. Therefore, if he was entitled to allowance for serving in Delhi previously, he was equally entitled now. His transfer to Rampur on paper was of no consequence and would not deprive him of these allowances which flowed from his service at Delhi. The stand of R-2 that these allowances were attached to his headquarter which had shifted to Rampur is fallacious. We fail to appreciate that if his transfer could be ordered on paper why can''t his headquarter be treated at Delhi temporarily on paper to rectify the anomalous position which is more of R-2''s making and to set the record straight. R-2 enjoys the requisite power to do so and was also required by R-2 to act on this but still he appears to be guided by his own unrealistic approach.

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19. The reason given by the Respondent to reject the claim by the Petitioner, as noted in para 16 above, itself shows that the Respondent is conscious of the fact that paper transfer approach has to be dissuaded and that the personnel should physically move to the place of posting on the transfer order being issued.

20. But, this is the obligation of the Respondent. Needless to state, the employees of the Respondent have no say in the transfer, posting and relieving orders.

21. Since the issue raised has been already settled against the Respondent in the two writ petitions earlier filed, and as noted above, we allow the writ petition and issue a mandamus to the Respondents to release, within 3 months, HRA and CCA to the Petitioner for the period 10.9.2003 till 24.9.2003.

7. Our attention is drawn to a judgment dated 17th of May, 2010 passed in W.P.(C) No. 20700/2005 entitled Hariom Mudgil v. Union of India and Anr. of this Court. Hariom Mudgil was appointed as an ASI (M) with the CRPF who was denied house rent allowance and compensatory city allowance/special duty allowance which he remained attached to Delhi though transferred/posted to a unit outside Delhi. This Court had noticed the several decisions of this Court on the issue raised in case and observed as follows:

2. This writ petition manifests sheer callousness on the part of the Respondents who have refused to comply with several judicial decisions made against them on the very issue raised herein.

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13. In view of the fact that despite repeated judgment/orders of this Court since 1995 against them, the Respondents have failed to follow any kind of discipline and have failed to abide by the correct legal position, valuable judicial time has been unnecessarily and unwarrantedly wasted. The Petitioner has also been constrained to seek legal redressal by filing the present writ petition. Instead of reacting in the matter in accordance with law, the Respondents did not apply the settled legal position. The Respondents opted to pay no heed to the several representations submitted by the Petitioner. In answer to the notice of the present writ petition, the Respondents have filed a counter affidavit challenging the case of the Petitioner despite the several judgments on the issue against them as noticed above. The contest by the Respondents has also necessitated a wholly avoidable and unwarranted burden on the public exchequer. In view of the above, we hold that the Petitioner shall be entitled to costs which are quantified at Rs. 10,000/-. This amount shall also be paid by the Respondents within a period of three months from today.

8. Despite this order having been passed on 17th May, 2010, the position remains the same. The present writ petition has been filed in identical circumstances as the writ petition in the above two cases.

9. We find that in the representation dated 9th October, 2010, the Petitioner informed the Respondents inter alia as follows:

(v) I have learned that HRA and TPT and other allowances are payable to the government servant applicable at the rate where the government servant is physically present. The Hon''ble High Court of Delhi vide their judgment dated 15/5/1995, 26/10/2003, 16/11/2009 and 17/05/2010 have given favourable judgments against the WP(C) No. 308/1994, WP(C) No. 7391/2001, 7582/2009 and No. 20700/2005 respectively. In this connection the judgment of the Hon''ble High Court Delhi dated 17/5/2010 which was issued against WP(C) No. 20700/2005 filed by SI(M) Hariom Mudgil is also enclosed for your ready reference.

10. The above narration would show that the Petitioner was clearly entitled to the relief which he had sought and had been wrongly denied the same.

11. In view of the above, we direct as follows:

(i) The order dated 7th October, 2009 to the extent it denied HRA, TPT and other allowances shall stand set aside and is hereby quashed.

(ii) The Respondents shall consider the representation dated 9th October, 2010 in accordance with the principles laid down in the aforenoticed decision and the applicable rules within a period of four weeks from today. The order passed thereon shall be communicated to the Petitioner.

(ii) The amounts, if any, to which the Petitioner is found entitled shall be released within a further period of six weeks thereafter.

(iii) The Petitioner shall be entitled to costs which are quantified at Rs. 10,000/- to be paid by the Respondents.

The writ petition is allowed in the above terms.