

GAHC010014322016



DB

2026:GAU-AS:6690-

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2576/2016

KANDARPA KANTA SARMA
S/O- LT. KARUNA KANTA SARMA, R/O HOUSE NO. 21, RANGBHUMI,
GOTANAGAR, DIST.- KAMRUP M, GUWAHATI, PIN- 781033, ASSAM.

VERSUS

THE UNION OF INDIA and 3 ORS
REP. BY THE GENERAL MANAGER, NORTH EAST FRONTIER RAILWAY,
MALIGAON, GHY- 11, ASSAM.

2:THE SDGM
N.F. RAILWAY
MALIGAON
MALIGAON
GHY-11
ASSAM.

3:THE FA and CAO
N.F. RAILWAY
MALIGAON
GHY- 11
ASSAM

Advocate for the petitioner : Mr. M.P. Sharma ... Advocate.

Advocate for the respondents : Mr. S.K. ChakrabortyAdvocate.

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Date of hearing & judgment : 15.05.2026

JUDGMENT & ORDER

(M. Zothankhuma, J)

- 1.** Heard Mr. M. P. Sarma, learned counsel appearing for the petitioner. Also heard Mr. S. Choudhury, learned counsel appearing for the N.F. Railway.

- 2.** The petitioner has put to challenge the impugned Judgment & Order dated 30.01.2015 passed by the learned Central Administrative Tribunal (CAT), Guwahati Bench in Original Application No. 119/2003, rejecting the prayer made by the petitioner for payment of House Rent Allowance (HRA) for the period from 25.09.2007 to 13.07.2009. The impugned judgment and order had been made on the ground that despite there being vacant Type-IV quarters which could have been allotted to the petitioner instead of grant of HRA in terms of the Government Circulars applicable to the petitioner, the petitioner had not applied for allotment of the vacant quarters. Thus, in terms of the Government Circulars the petitioner could not be eligible for grant of HRA.

- 3.** The petitioner filed the present writ petition and the same was disposed of, vide judgment dated 21.05.2018, wherein this Court held that there was nothing on record to indicate the basis on which the decision to pay HRA from

14.07.2009 was taken and there was also nothing to show the actual vacancy position of Type-IV quarters during the relevant period of time. Further, the Railways had failed to give any convincing answer to the query as to how 15 officers referred to in the departmental communication dated 23.03.2011, who were enjoying identical Pay Scale as the petitioner were permitted to draw HRA during 25.09.2007 to 14.07.2009, if Type-IV quarters were in fact lying vacant during the time. This Court thus directed the respondents to pay the HRA of the petitioner from 25.09.2007 to 13.07.2009.

4. Subsequent to the above the Union of India filed Review Petition No. 9/2019 challenging the earlier judgment and order of this Court dated 21.05.2018 on the ground that the two issues raised in the writ petition were available with the authorities, yet the learned council for the Railway Authorities had failed to point out the same before this Court. It was pointed out in the Review Petition that there was a proper explanation as to why the 15 officers were allowed to draw HRA, which was on account of the fact that they belonged to a separate Division of the N.F. Railway vis Construction Line of Railway and they were under different administration, which authority was not impleaded as a party to the writ petition, as a result of which correct information could not be placed before this Court. Further there were materials to show that vacant quarters in Type-IV category were in fact available during the relevant period and therefore the said aspect of the matter should have been placed before this Court. It may be also stated that in the meantime the N.F. Railway had paid the HRA amount claimed by the petitioner in terms of the order dated 30.01.2019 passed in the Review Petition, wherein it had been held that the respondent would make payment of the dues of the petitioner which would be subject to

further orders that may be passed in the Review Petition.

5. Review Petition No.9/2019 was therefore disposed of, vide order dated 01.12.2022 by allowing the Review Petition and restoring WP(C) No. 2576/2016 to its original file. It also made clear that there would be no recovery of the HRA already paid to the petitioner until further orders. The Review Petition had been allowed by this Court on the ground which is reproduced herein-below:

“

It is no doubt correct that from the grounds taken in the review petition we find that there was some lapse on the part of the respondent/review petitioners to point out the correct facts before the court. Considering the fact that the issue raised by the petitioner's counsel has a financial bearing on the N.F. Railways and in view of the materials placed before us in this review petition, we are of the opinion that, for the ends of justice, the matter deserves to be revisited without, however, permitting the authorities to disturb the HRA already paid to the respondent/writ petitioner on the strength of order dated 30.01.2019 unless otherwise directed. In other words, we are convinced that the impugned order dated 21.05.2018 deserves to be re-viewed on the grounds noted herein above.

.....”

6. The petitioner's case is that he was appointed as Jr. Accounts Assistant in the N.F. Railway in the year 1981 and posted in the office of the FA & CAO at Maligaon. He had been occupying a Type-II government quarter on the date of joining his post and by promotion, he was subsequently appointed and posted as Senior Assistant Financial Advisor in the year 2008. The petitioner was subsequently posted as Vigilance Officer, Accounts, in the office of the Chief Vigilance Officer, Maligaon in the year 2010.

7. The petitioner's further case is that while occupying the Type II quarter allotted by the N.F. Railway Authority from the date of his appointment, he started constructing his own residential house. He shifted to his private residence on completion of the same on 22.09.2007, after vacating his official accommodation. The petitioner thereafter claimed HRA with effect from 25.09.2007, i.e., the date from which the quarter that had been allotted to him was allotted to another railway official. The petitioner's case is that he had been granted HRA with effect from 14.07.2009, though the petitioner was to be given HRA for the period from 25.09.2007 till 13.07.2009. The petitioner being aggrieved by not being granted HRA for the period from 25.09.2007 to 13.07.2009, approached the learned CAT by filing O.A. No. 119/2013, which was rejected vide the impugned Judgment & Order dated 30.01.2015. As such, the present writ petition was filed in the year 2016.

8. Mr. S. Choudhury, learned counsel appearing for the N.F. Railway, on the other hand, submits that the petitioner is not entitled to any HRA for the period from 25.09.2007 till 13.07.2009, on account of the fact that the petitioner had vacated his official quarter and moved into his private house on 22.09.2007. He submits that the petitioner was entitled to Class-IV accommodation at the time he had left the official accommodation, i.e., Class-II accommodation. However, as there was vacant Class-IV accommodation available for the petitioner and as he had surrendered his Class-II accommodation, he was not entitled to HRA in terms of paragraphs 1, 3 and 6 of the letter dated 07.06.88, which is as per the parameters and guidelines laid down by the Railway Authorities.

9. He also submits that in terms of paragraph 3 of the letter dated 09.05.2003, issued by the Jt. Director, Estt.(P&A), Railway Board, the petitioner was not eligible to draw HRA, as there was surplus Class-IV accommodation which could have been occupied by the petitioner, if he applied for the same.

10. We have heard the learned counsels appearing for the parties.

11. The issue to be decided is to whether the petitioner was entitled to be granted HRA with effect from 25.09.2007 till 13.07.2009, i.e., from the date the petitioner vacated his official accommodation to move into his own private residence.

12. Paragraphs 1, 3 and 6 of the letter/circular issued by the Director, Establishment (P&A), Railway Board dated 07.06.1988 is reproduced herein below as follows:

"A copy of Railway Board's letter No. E(P&A)II/87/HRA/15 dated 16.5.88 on the above subject is forwarded for information and guidance. Railway Board's earlier letters 10.7.67, 29.8.68 and 30.12.87 referred to in their present letter were circulated under:

Board's Letter No. & date

This office circular No. &

date

PC-67/JCM-2 dated 10.7.67

ALC-147-E/9/0/2(C) dt. 22.8.67

*PC-67/JCM-2 dated 29.08.68
16.9.68*

ALC-182-E/9/0/2P1. II(C) dated

*E(P&A)87/HRA/15 dt. 30.12.87
19.1.83*

ALC-698-E/9/0/2Pt. VII(C) dated

Sd/-Illegible

for CHIEF PERSONNEL OFFICER

(Copy of Railway Board's letter No. E(P&A)II/87/HRA/15 dated 16-5-88).

Sub: Admissibility of H.R.A. in the event of non-acceptance or surrender of railway residential accommodation.

In terms of instructions contained in the Ministry's letter No. PC-67/JCM-2 dated 10.7.67, in supersession of provisions contained in Rules 416(1), 417(1) and 417(2)-B.1 (1971 edition) it was decided that railway servants who are eligible for railway accommodation and (i) who do not submit application for such accommodation; or (ii) who, after submitting application for such accommodation, refuse to accept accommodation when offered/allotted; or (iii) who, after having accepted such accommodation, surrender it, may be paid house rent allowance, if otherwise admissible, provided that -

(a) those referred to in (ii) and (iii) above will not be considered again for allotment of railway accommodation for a period of one year from the date of such refusal or surrender; and

(b) the number of units available for allotment does not exceed the number of eligible employees, and there is no prospect of any residential unit remaining vacant as a result of such refusal, surrender or non-application for accommodation.

3. *It was further clarified in this Ministry's letter No. PC-67/JCM-2 dated 29-8-68 that in the case of surrender of accommodation, house rent allowance, if otherwise admissible will be payable from the date it is certified by the accommodation-controlling authority that no accommodation in the entitled class is available for allotment.*

6. *In case after issue of orders, it transpires that some accommodation is likely to remain vacant/un-occupied due to lack of demand, the orders should be reviewed and it should be made compulsory to submit applications for such types, where there is surplus accommodation, and consequently, the employees entitled for such types would not be eligible to draw house rent allowance."*

13. A reading of paragraph 1 of the letter dated 07.06.1988 does not appear to bar the grant of HRA to a railway official who has not submitted an application for accommodation or for refusing to accept the accommodation when offered/allotted to the said railway official. Paragraph 1 of the said letter also provides that the railway official after having accepted such accommodation may surrender it and could be paid HRA, provided that those referred to any sub-clause (ii) and (iii) will not be considered again for allotment of railway accommodation for a period of 1 (one) year from the date of such refusal or surrender and that the number of units available for allotment does not exceed the number of eligible employees. Further, the proviso also states that there should be no prospect of any residential unit remaining vacant as a result of such refusal, surrender or non application for accommodation.

14. Thus, though the first part of paragraph 1 does not bar a railway official from being given HRA, only because he does not submit an application for such accommodation or has refused the allotment or surrendered the same subsequently, proviso (b) of paragraph 1 makes it clear that there should not be vacant residential units remaining as a result of such refusal or surrender or non- application for accommodation, which would render the said railway official to be ineligible for grant of HRA.

15. Paragraph 3 of the said letter dated 07.06.1988 provides that in case of surrender of the accommodation, HRA, if otherwise admissible, will be payable from the date it is certified by the Accommodation Controlling Authority that no accommodation in the entitled class was available for allotment.

16. In the present case, the petitioner was satisfied with the allotment of Class-II accommodation, and he did not make any representation against the

same. He had surrendered the Class-II accommodation only because he wanted to enter into his newly constructed private house and in terms of paragraph 3 of the said letter dated 07.06.1988, the petitioner could not have been granted HRA till Railway accommodation in the entitled class was not available for allotment to the petitioner. The respondents had accordingly paid HRA from 14.07.2009, when the next allottee of the petitioner's Govt. accommodation had entered into the said accommodation.

17. Thus, the above letters/circulars would go to show that the issue of whether there was any vacant Class-IV accommodation available for allotment to the petitioner would have to be decided, so as to legitimately deny the petitioner his HRA for the period from 25.09.2007 to 13.07.2009

18. With respect to the above, paragraph 14 of the impugned order dated 30.01.2015 passed by the learned CAT shows that as on 25.09.2007, there were Type IV bungalows which were lying vacant and which could be allotted to the railway officials. Paragraph 4 of the impugned order dated 30.01.2015, read with proviso (b) to paragraph 1 of the letter dated 07.06.88 requires the following fact to be clarified, i.e., the number of Type IV quarters available for allotment on 25.09.2007 and the number of eligible candidates who could be allotted Type IV accommodation on 25.09.2007, but were not occupying Type IV accommodation.

19. We have also been made aware of Paragraph 3 of the letter/circular dated 09.05.2003 issued by the Jt. Director, Estt.(P&A) Railway Board, which states as follows:-

"In case at any point of time it transpires that some accommodation is likely to remain vacant/un-occupied due to lack

of demand, it should be made compulsory to submit applications for such types where there is surplus accommodation and consequently, the employees entitled for such types would not be eligible to draw House Rent Allowance.”

A reading of the above paragraph in the said letter/circular dated 09.05.2003 shows that the said letter had been addressed to the General Managers of the All India Railways and Production Units, etc.

20. We find that there is no challenge to the applicability of the letter/circular dated 07.06.1988 and letter/circular dated 09.05.2003 to the petitioner and other railway officers. In view of the above, it is clear that if there less Type-IV quarters than eligible candidates/officers for allotment of the said Type-IV quarters, the petitioner would have to be paid his HRA from the date of eligibility. On the other hand, if there are more Type-IV quarters than eligible officers, the petitioner would have to apply for the same and HRA can be denied to him, if not applied for. In the present case, the petitioner has not applied for allotment of Type-IV quarters. To find out the number of vacant Type-IV quarters and eligible officers entitled to the same, we have noticed the communication dated 23.03.2011 issued by the Government which provides the List of Officers who have been given HRA, the names of the officers and their designation are as follows :

<i>SN</i>	<i>NAME OF OFFICERS</i>	<i>DESIGNATION</i>
<i>1</i>	<i>Mr. Ashit Bhattacharya</i>	<i>PPS/Gr.II/GM/Con,MLG</i>
<i>2</i>	<i>“ Milan Ghosh Roy</i>	<i>Retd. Dy.CE/Con/MLG</i>
<i>3</i>	<i>“ H. C. Senapati</i>	<i>Retd. Dy.CE/Con/MLG</i>

4	" <i>K. N. Dutta</i>	<i>XEN/Con/MLG</i>
5	" <i>A. K. Lahiri</i>	<i>Retd.OSD/Con/Kolkata</i>
6	" <i>Gakul Ch. Das</i>	<i>SSTE/Con/MLG</i>
7	" <i>D. Kahali</i>	<i>DEE/Con/MLG</i>
8	" <i>P. K. Deka</i>	<i>SSTE/Con/MLG</i>
9	" <i>R. K. Patowary</i>	<i>SMM/Con/MLG</i>
10	" <i>Pulak Chakraborty</i>	<i>DSTE/Con/MLG</i>
11	" <i>T.P.R. Narayan Rao</i>	<i>CE/Con-8/MLG</i>
12	" <i>Sunil Singh</i>	<i>Secy. to GM/Con/MLG</i>
13	" <i>S. Sengupta</i>	<i>OSD/Con/Kolkata</i>
14	" <i>S. K. Banerjee</i>	<i>Dy.CSTE/Con/MLG</i>
15	" <i>S. Sengupta</i>	<i>DSTE/Con/MLG</i>

21. We have been informed by the learned council for the N.F Railways and noted that Sl. No.2, 3, 5, 6, 11, 12 & 14 are entitled to Type-V quarters, while the petitioner is entitled to a Type-IV quarter. We have also been informed that HRA has wrongly been given Sl. No.15, for which proceedings for recovery of the same is contemplated. Further, Sl. No.9 is posted at Silchar and Sl. No.13 is posted at Kolkata. As such, out of the 15 persons mentioned in the

communication dated 23.03.2011, only 5 persons who are in a similar condition as the petitioner have been granted HRA. We have also been informed that those 5 persons have been given their HRA from January 2007, in relation to the facts and circumstances of the situation prevalent at that time, which is much before the petitioner's case arose.

22. We have also seen the reply dated 03.05.2011 to the petitioner's RTI question at Sl. No.2, which shows that there were 7 vacant Type-IV quarters on 25.09.2007, i.e, there were more quarters vacant than officers entitled to Type-IV quarters.

23. Keeping in view the fact that there was no distinction between officers who are having their own residence and those who did not, the letters/circulars issued by the Government/ Railways shows that it was mandatory on the part of Railway officers to apply for the vacant quarters. Further, in terms of the letter/circular dated 07.06.1988, HRA could be given to those who did not submit application for accommodation and who after submitting application for such accommodation refused to accept it when offered or who having accepted such accommodation surrendered it, unless the number of units available for allotment did not exceed the number of eligible employees. In the present case, the number of vacant Type-IV quarters to which the petitioner is entitled to, was more than the number of eligible officers and thus, in terms of the letters/circulars applicable to the Railway officers entitled to Type-IV quarters, HRA could not have been given to the petitioner from 25.09.2007. We do not know as to whether those 5 persons mentioned in the communication dated

23.03.2011, who have been granted HRA were eligible to be given HRA in terms of the letters/circulars dated 07.06.1988 and 09.05.2002. Assuming that those 5 persons, i.e. Sl. Nos.1, 4, 7, 8 & 10 were not entitled to HRA in terms of the above letters/circulars, but were given the same, we are unable to hold that the petitioner is entitled to HRA on grounds of discrimination. This would only result in perpetuating an illegality, inasmuch as, the grant of HRA is governed by the letters/circulars mentioned above, which is applicable to the case in hand. As such, we do not find any infirmity in the decision of the learned Tribunal in rejecting the case of petitioner.

24. In the case of *Lalit Popli v. Canara Bank and others*, reported in **(2003) 3 SCC 583**, the Supreme Court has held that while exercising jurisdiction under Article 226 of the Constitution, the High Court does not act as an appellate authority. It's jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of the principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

25. In the case of *Shamshad Ahmed & Others v. Tilak Raj Bajaj (Deceased) through LRs & Others*, reported in **(2008) 9 SCC 1**, the Supreme Court held that the High Court under Article 226 can neither review nor re-appreciate, nor re-weigh the evidence upon which determination of a Subordinate Court or inferior Tribunal purports to be based or to correct errors of fact or even law and to substitute its own decision for that of the inferior Court or Tribunal. It further held that the power of the High Court under Article

226 is supervisory in nature and must be exercised most sparingly only in appropriate cases, in order to keep the District Courts and the Tribunals within the limits of law.

26. In the case of ***Chandavarkar Sita Ratna Rao vs. Ashalata S. Guram***, reported in ***(1986) 4 SCC 447***, the Supreme Court had held that unless there was a grave miscarriage of justice or flagrant violation of law calling for intervention, it was not for the High Court under Article 226 and 227 of the Constitution to interfere. If there is evidence on record on which a finding can be arrived at and if the Court has not misdirected itself either on law or on fact, then in exercise of the power under Article 226 or 227 of the Constitution, the High Court should refrain from interfering with such findings made by the appropriate authorities.

27. Keeping in view the fact that there were more vacant Type-IV quarters than eligible officers and in the absence of the petitioner making an application for allotment of a vacant Type-IV quarters, in terms of the letters/circulars applicable to the Railway officials, we are of the view that no grounds for interference with the decision of the learned tribunal has been made out.

28. Having stated the above, as the payment of HRA had been made by the Railway Authorities to the petitioner on the basis of the order dated 30.01.2019 passed in the Review Petition, which was subject to further orders that may be passed in the Review Petition. As the order disposing of the Review Petition had held that recovery of the HRA already paid to the petitioner would not be made

until further orders, we hold that there is no justification for the petitioner to keep hold of the HRA given to him for the period from 25.09.2007 till 13.07.2009, as the claim for the HRA for the said period is to be dismissed.

29. The petitioner not being eligible to be given HRA for the said period and as the said amount given to him was subject to the further orders of this Court, we direct the petitioner to return the HRA amount paid to him for the period 25.09.2007 to 13.07.2009 to the respondent nos. 2 & 3. The same should be done within a period of 1 (one) month from the date of receipt of a copy of this order.

30. The writ petition is accordingly dismissed.

JUDGE

JUDGE

Comparing Assistant