



2025:DHC:9730-DB



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

+ **W.P.(C) 1172/2024**

SANJAY KUMAR CHOWDHARYPetitioner

Through: Petitioner in person

versus

UNION OF INDIA AND ANR.Respondents

Through: Mr. Kavindra Kumar Gill, SPC

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

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04.11.2025

C. HARI SHANKAR, J.

1. This writ petition is directed against the following order dated 2 September 2022 passed by the Additional Director General, ITBP:

“No.1-II-22015/01/Estt-1/HRA/2022-1242-44
office of the ADG, Eastern Command HQ
Indo-Tibetan Border Police
MHA/Govt. of India
R.T.T.C. BSNL, Building
Dharapur, Guwahati (Assam)- 781017

Date: 02.09.2022

In compliance to Ministry of Finance, Govt. of India OM No.-2/5/2017-E.II(B) dated 07.07.2017 issued on the basis of recommendation of Seventh pay Commission and DIG(Org) Dte Gen ITBP Force E-mail NO. 5301 dtd 23.08.2021, the HRA sanctioned w.e.f. 01.07.2021 to the under mentioned officers posted in Eastern Command HQ, Guwahati (Assam) at the rate prescribed “Y” Category city i.e. 16% of basic pay, is hereby revised as 8% and 9% of basic pay authorized for “Z” Category city as per details given below:-



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S. No	Regtl. No.	Rank	Name	HRA sanctioned for the period		Category & Rate of HRA
1.	111103974	IG	Sanjay Kumar Chowdhary	05.03.2021	30.06.2021	“Z” Cat. 8%
				01.07.2021	28.02.2022	“Z” Cat. 9%
2.	111104035	DIG	K.P. Singh	05.03.2021	30.06.2021	“Z” Cat. 8%
				01.07.2021	28.02.2022	“Z” Cat. 9%
3.	111105148	DIG	Davinder Singh	05.03.2021	30.06.2021	“Z” Cat. 8%
				01.07.2021	28.02.2022	“Z” Cat. 9%

Sd/29.08.2022

Additional DG

Eastern Command HQ, ITB Police

It is certified that:-

- No. Govt. accommodation has been provided to officer in present location.
- Permission of out living has been granted to the officers on his own request due to non availability of Govt. accommodation in present location.
- Above officer are being sanctioned HRA at the rate of 8% to 9% of their basic pay as admissible in category ‘Z’ as Eastern Command HQ, ITBP Force RTTB, BSNL, Bhawan, Dharapur, Guwahati is not under the area of municipality corporation.

Distribution:-

- DIG, CRO, ITB Police Force (Two Copies)
- FO Clerk, Eastern Command HQ for publication in force order.
- Office copy.

Sd/-

Commandant (Admn&Pers).

Eastern Command HQ, ITB Police”

2. The petitioner appears to have been entirely unnecessarily dragged to Court in this case.



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3. The petitioner was posted at RRTC, BSNL Building, Dharapur, w.e.f. 23 March 2021. The petitioner was paid HRA¹ as available to residents of a Y category city from the said date.

4. Entitlement to HRA is governed by the provisions of Department of Expenditure² Office Memorandum³ dated 27 November 1965, of which the following clause is relevant:

“3. Areas where admissible.

(iii) Staff working in aerodromes, meteorological observatories, wireless stations and other Central Government establishments within a distance of 8 kilometres from the periphery of the municipal limits of a qualified city will be allowed house rent and compensatory (city) allowances at the rate admissible in that city even though they may not be residing within these municipal limits, provided that-

(1) there is no other surburban municipality, notified area or cantonment within the 8 kilometres limit; and

(2) it is certified by the Collector/Deputy Commissioner having jurisdiction over the area that the place is generally dependent for its essential supplies, e.g. foodgrains, milk, vegetables, fuel etc., on the qualified city.”

Thus, the category of HRA to which the employee/staff would be entitled is determined as per the location, not of the residence of the employee, but as per the location of her, or his, office,

5. It is an acknowledged position in the counter affidavit that this instruction is applicable. Indeed, Mr. Gill, learned Senior Panel

¹ House Rent Allowance

² “DoE” hereinafter

³ “OM” hereinafter



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Counsel for the respondents, also endorses that these instructions would be applicable in the present case.

6. As per the above instruction, if the office of the employee is situated within 8 kilometres of the municipal limits of a particular city, the employee would be entitled to HRA as applicable to that city. The categorisation of cities took place as far back as in 2017, and is contained in an Annexure to Department of Personnel & Training⁴ OM dated 7 July 2017. As per the said annexure, Guwahati is a Y category city. It does not appear that the aforesaid categorisation has ever changed thereafter.

7. On 22 March 2022, the following certificate was issued by the Office of the Deputy Commissioner, Kamrup, Metropolitan District, Guwahati:

“CERTIFICATE

It is hereby certified that:

1. Eastern Command HQr, ITBP is located at RTTC BSNL, Building, Dharapur is a Panchayat Area.
2. RTTC BSNL Building, Dharapur is not situated in a Municipality or notified area or cantonment.
3. RTTC BSNL Building, Dharapur is within a distance of 08 Kilometers from the periphery of the Municipal limits of Guwahati, Assam.
4. Deleted Vide O.M. No. 2(10)-E.II(B), dated the 25th January, 1993.

This certificate has been prepared on the basis of the report submitted by the Circle Officer, Azara Revenue Circle vide No. ARC 25/2018/257, dated 16/03/2022.

⁴ “DOPT” hereinafter



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Sd/-
Deputy Commissioner,
Kamrup Metropolitan District,
Guwahati.”

8. Thus, it is certified by the Deputy Commissioner, Kamrup Metropolitan District, Guwahati that the RRTC, BSNL building, Dhararpur where the petitioner was employed after 23 March 2021, was within 8 kilometres of the peripheries of the municipal limits of Guwahati.

9. Applying clause 3(iii) of the DoE OM dated 27 November 1965, therefore, the petitioner would be entitled to HRA as applicable to the city of Guwahati.

10. Guwahati being a Y category city, the petitioner was entitled to HRA as applicable to Y category cities. The impugned Office Memorandum itself makes it clear that residents of Y category cities were entitled to HRA @ 16%.

11. Clearly, therefore, the petitioner was correctly paid 16% HRA from the time he joined the office at RRTC, BSNL building, Dhararpur on 23 March 2021. It appears that, for the period after the aforesaid certificate was obtained, the petitioner has in fact been paid HRA @ 16%.

12. Apparently, proceeding on a mistaken premise that the certificate would apply only prospectively, the impugned Office Memorandum has come to be passed on 2 September 2022,



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retrospectively revising the rate of HRA payable to the petitioner from 16% to 8% with effect from 5 March 2021 to 30 June 2021 and 9% for the period 1 July 2021 to 28 Feb 2022, being the rates of HRA applicable to Z category cities.

13. This is obviously an incorrect decision, as Guwahati continued to remain a Y category city for the entire aforesaid period and the petitioner's office also continued to remain within 8 kilometres of the municipal limits of Guwahati. These facts are not in dispute.

14. The decision of the respondents to retrospectively treat the petitioner as only entitled to Z category HRA prior to 28 February 2022 is, therefore, clearly vitiated by non-application of mind.

15. Accordingly, we quash and set aside the impugned OM dated 2 September 2022. In case any recoveries have been made from the petitioner consequent to the aforesaid impugned OM, the amounts shall be re-paid to the petitioner within a period of six weeks from today. Failure to do so shall entail additional liability to interest @ 12% till the payment is made.

16. The writ petition stands allowed accordingly, with no orders as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

NOVEMBER 4, 2025

dsn/gunn