

8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No.1069/2002

Date of decision: 8.01.003

Sh. S.K. Goyal

.. Applicant

(By Advocate: Sh. J.P. Gulati)

versus

Union of India & Ors.


.. Respondents

(By Advocate: Sh. M.M. Sudan)

CORAM:

Hon'ble Dr. A. Vedavalli, Member(J)

To be referred to the Reporter or not? *Yes.*


(Dr. A. Vedavalli)
Member(J)

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1069/2002

New Delhi this the 8th January, 2003

Hon'ble Dr. A. Vedavalli, Member(J)

Sh. S.K. Goyal,
Chief Commissioner of Income
Tax, Kanpur (Retd.),
838, Sector-15A,
Faridabad.

.... Applicant

(through Sh. J.P. Gulati, Advocate)
Versus

1. Union of India through
Secretary,
Deptt. of Revenue,
Ministry of Finance,
New Delhi-1.

2. Principal Chief Controller of
Accounts, CBDT,
Lok Nayak Bhawan,
New Delhi-3.

.... Respondents

(through Sh. M.M. Sudan, Sr. Standing Counsel)

O R D E R

Hon'ble Dr. A. Vedavalli, Member(J)

The applicant S.K. Goyal, a retired Chief Commissioner of Income Tax, is aggrieved by the rejection of his claim for payment of House Rent Allowance by the respondents. He has impugned a letter dated 22.06.2001 (Annexure-11) issued by Respondent No.2 in this OA.

2. Facts of this case briefly are as under:-

The applicant was working as Chief Commissioner of Income Tax at Kanpur from 26.05.1999 to 31.01.2001. He retired from service on 31.01.2001. He claims that while he was serving in Kanpur government accommodation of the entitled type was not available in the Income Tax

A.


10

colony or the Central Government Pool and hence requested the British India Corporation (BIC for short), a Public Sector undertaking, to allot him a house owned by them which was earlier occupied by one of the applicant's predecessors and was vacant. The said Corporation by its letter dated 24.06.1999 (Annexure-3) allotted "Mayfield Bungalow", 10/463 Khalasi Lines, Kanpur to the applicant specifying inter alia that he will pay them rent at Rs. 650/- (Rs. Six Hundred and Fifty only) per month. A certificate dated 05.06.1998 (Annexure-4) relating to the nature of the allotment of the house earlier to one B.P. Gupta has been filed with the OA by the applicant. As the applicant's pay bill for July 1999 claiming HRA at 15% of his pay was not passed by the Zonal Accounts Officer, he submitted a petition dated 5.8.1999 (Annexure-5) to the Ministry of Finance. The Ministry of Finance in their letter dated 10.11.2000 (Annexure-6) with reference to a letter dated 19.06.2000 submitted by the applicant (copy not filed) on the subject of HRA have stated inter alia that the proposal contained in the aforesaid letter has been approved as a special case subject to the conditions stipulated therein. The applicant submitted again a bill in December 2000 claiming HRA on the basis of the aforesaid letter of the Ministry of Finance but the same was not admitted by the Zonal Accounts Officer stating that the matter is under reference to the Principal Chief Controller of Accounts and that the bill cannot be paid till reply is received from the headquarters. The applicant took up the matter with Principal Chief

Av

Controller of Accounts, CBDT(R-2). Ultimately, the decision of the Principal Chief Controller of Accounts was conveyed to the applicant by the respondents by the impugned order dated 22.06.2001 (Annexure-11). Against the said order the applicant submitted a representation dated 04.07.2001 (Annexure-13) followed by a reminder dated 27.09.2001 (Annexure-14) and a legal notice dated 29.11.2001 under Section 80 of the Code of Civil Procedure (Annexure-15). The Principal Chief Controller of Accounts replied through letter dated 10.12.2001 (Annexure-18).

3. The applicant claims the following reliefs in this OA:-

- "(i) Call for the records of the case and that of Shri B.P. Gupta and Shri T.K. Das if considered appropriate, who were allowed HRA for the same accommodation and on payment of the same rent.
 - (ii) Declare that action of respondent no.2 denying HRA to applicant violates rules regulating HRA to Central Government employees and issue suitable instructions to allow HRA to the applicant.
 - (iii) Declare that action of respondent no.2 to deny HRA to the Applicants is not maintainable in view of the special sanction granted by the MOF.
 - (iv) Allow payment of arrears of HRA due to him along with the interest @ 15% for delay till the date of actual payment.
 - (v) Pass any other order, which the Honb'ble Tribunal may deem just and equitable on the facts and circumstances of the case."
- 

4. However, learned counsel for applicant Sh. J.P. Gulati had made a statement at the Bar during the hearing that he will not be pressing his relief as contained in Para 8(i) of the OA so far as Shri T.K. Dass is concerned and will confine himself to his claim based on the case of Shri B.P. Gupta only.

5. The OA is contested by the respondents who have filed their counter to which a rejoinder has been filed by the applicant.

6. Learned counsel for the applicant Sh. Gulati submitted that the house which was allotted i.e. Mayfied Bungalow to the applicant by BIC a Public Sector undertaking on a monthly rent of Rs. 650/- (Rs. Six Hundred & Fifty only) is in his personal name and in his private capacity and that the discharge of all the obligations relating to the said tenancy during his tenure at Kanpur will be the applicant's responsibility and not of the Income Tax department. It was contended by the learned counsel that Respondent No.2 by the impugned order dated 22.06.2001 (Annexure-11) has wrongly denied the payment of HRA claimed by the applicant on an erroneous interpretation of the Government of India O.M. dated 27.10.1994 (Annexure-16) by holding that the rent paid by the applicant for a dilapidated house was at a concessional rate and that further there is no condition of payment of rent in excess of 10% of the pay for claiming this allowance under the rules.

BY

7. It was also contended by the learned counsel for applicant that the denial of HRA to the applicant is contrary to the Ministry of Finance sanction and his reminder since he was not treated on par with one B.P. Gupta who had drawn HRA under similar circumstances.

8. It was further argued by the learned counsel that Respondent No.2 has failed to understand and appreciate the rule position under which the grant of HRA can be denied only if hostel accommodation is allotted at a subsidized rent and to officers posted to the centre and staying temporarily in a State Bhawan or Government Guest House or in Inspection quarters, which is not the case in respect of the applicant. The OM dated 27.10.1994 (Annexure-16) on the basis of which the impugned order dated 22.06.2001 (Annexure-11) was issued by Respondent No.2 is not applicable to the case of the applicant. Hence the impugned order of Respondent No.2 is arbitrary, unfair and violative of the prescribed statutory rules. Such an order deserves to be quashed and set aside. It was further submitted that Respondent No.1 has failed to intervene in the matter and render justice to the applicant inspite of several representations submitted by him.

9. In reply, learned counsel for the respondents Sh. M.M. Sudan submitted that as per Rule 4 of FRs & SRs (Part(V) HRA & CCA) Rules, HRA is not

AN

14

admissible to the employees who are allotted hostel accommodation run by autonomous/semi autonomous organisations at subsidized rates and officers staying in Inspection quarters. It was also submitted by the learned counsel that the intention of the government as per the aforesaid rules is that a government servant is not entitled to HRA if he is covered by the aforesaid rules i.e. if he is residing in such accommodation on subsidized or concessional rate etc. Learned counsel has also referred to the instructions as contained in Ministry of Finance, Department of Revenue ID Note dated 3.3.1999 (Annexure-R(II)) and stated that under the existing instructions, when a government employee is allotted accommodation belonging to a public undertaking he is not entitled to HRA as the quarters are allotted to such employee because of his posting in the department as per the aforesaid note.

10. Learned counsel further submitted that as the applicant was residing in Mayfield Bungalow at Kanpur allotted to him by BIC which is a Public Sector undertaking with its 100% share capital held by Government of India he is not entitled for HRA.

11. Re the approval of Ministry of Finance regarding payment of HRA by their order dated 10.11.2000 (Annexure-6 to the OA), it was submitted by the learned counsel for the respondents that the applicant's claim that HRA was sanctioned to him by the said order is not tenable. The said approval is conditional and not

[Signature]

13

absolute. The two conditions are (i) Rent charged by BIC is not at concessional rate and (ii) The contract agreement between the BIC and the applicant is a private matter.

12. Learned counsel for the respondents submitted further that the Department of Revenue, Ministry of Finance O.M. dated 27.10.1994 (Annexure 16 to the OA) provides that the employees who are posted in the Centre and stay temporarily in State Bhavans/Guest Houses run by the State Govts./autonomous organisations may be reimbursed the amount of rent paid by them in excess of 10% of their basic pay or the HRA admissible to them whichever is such. He argued that as the applicant was to pay Rs.650/- as a monthly rent to BIC which was less than 10% of his basic pay, it is a concessional rate and hence he has not fulfilled condition No.1 referred to earlier.

13. It was also submitted by the learned counsel that BIC is a Public undertaking fully owned by Government of India and the premises belonging to the said Corporation is a public premises in terms of Section 2(e)(2)(i) of the Public Premises (Eviction of unauthorised occupants) Act, 1971. Such premises cannot be let out by such Corporation as a private arrangement with any Government employee and hence in the present case it cannot be treated as a private agreement between the said Corporation and the applicant for letting out accommodation as it is contrary to the law. It was also

~~AN~~

16

argued that as per the provisions of Ministry of Finance ID note dated 03.03.1999 referred to earlier, when the Government employees are allotted accommodation belonging to a Public Sector undertaking they are not entitled to HRA as the quarters were entitled to them because of their posting in the department. The contents of the letter of allotment/agreement dated 24.6.1999 (Annexure-3 to OA) clearly establish that the BIC was allotted to the applicant by virtue of his posting at Kanpur and not in his private capacity. Learned counsel in the circumstances submits that the applicant has not fulfilled the above Condition No.2 also.

14. It was submitted by Sh. Sudan that so far as B.P. Gupta's case is concerned, irregular payment of a sum of Rs. 22,710/- as HRA was made during the period of occupation of accommodation provided by BIC at Kanpur up to the date of retirement from service and the same was required to be recovered from his retirement dues. However, the department of Revenue Ministry of Finance vide their letter dated 16.10.1998 (Annexure R-6) granted waiver of the said irregular payment as it would cause him undue hardship as a special case and the question of its application to his successor does not arise as stated in the said letter of waiver itself.

15. Learned counsel for respondents submitted that the matter was thoroughly examined by Respondent No.2 and it was clarified in the impugned order dated

[Signature]

12

22.06.2001 (Annexure-11 to OA) that in the light of HRA Rules and circulars on the subject, HRA is not admissible to the applicant. He prayed that the OA may be dismissed with costs as the same is devoid of any merit.

16. Heard the learned counsel for both the parties. Pleadings and the material papers and documents placed on record have been perused. The matter has been considered carefully.

17. The crucial question which arises for consideration is whether the applicant who was residing in a bungalow allotted by BIC a Public Sector undertaking is entitled for payment of HRA under the Rules for the relevant period.

18. The impugned order dated 22.06.2001 (Annexure-11) issued by Respondent No.2 is as under:-

"F.No.2-85/4/2001-02/PCCA/CDN/HRA/84/

Dt: 22 June, 2001

To

Sh. S.K. Goyal,
I.R.S., 838, Sector 35-A,
Faridabad,
121007.

Sub: Payment of HRA to the officers
residing in accommodation provided
by "Public Sector Undertaking."

Sir,

With reference to your letter dt.
26-5-2001, on the subject cited above, I
am to state that in terms of G.O.I.,
M.O.F. O.M. No.2(39)/94-E2(B) dt.
27-10-94, the government servant who stays
in State Bhawan/Guest house run by state

~~A~~

18

government/autonomous organisations are not entitled for house rent allowance. The least of the following can however be re-imbursed:-

- (a) Rent paid in excess of 10% of Basic Pay
- (b) House rent allowance admissible to the officer concerned.

Since the accommodation in your case was provided by British India Corporation which is a public sector undertaking and the rent paid is less than 10% of your basic pay it amounts to concessional rent in terms of O.M. dt. 27-10-94; *ibid.*

In the case of Sh.B.P. Gupta, the Deptt. vide D.O.No. F.No. 21/06/98-AD/IC dt. 16-10-98 (para 3) as informed that since the case of Sh. B.P. Gupta had been decided as a special case and the question of its application to your case doesn't arise. As such you are not entitled to draw H.R.A.

Yours faithfully,

(R.Y. Tiwari)
Accounts Officer"

19. the order issued by Respondent No.1 dated

10.11.2002

(Annexure-6) regarding grant of HRA to the

applicant is as under:-

10.11.2000

vide order dt.

21.3.2003.

[Signature]

"F.No.A-27014/1/2000-Ad.VIA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
.....

NEW DELHI, the 10/11/2000.

To

Shri S.K. Goyal,
Chief Commissioner of Income Tax,
Kanpur.

Subject:- HRA matter __ Regarding.

Sir,

I am directed to refer to your

[Signature]

19

Letter F.No.-CCIT/KNP/Accts/99-2000/1512 dated 19-6-2000 on the subject cited above and to say that the matter regarding HRA was considered in consultation with Department of Expenditure. The said proposal has been approved as a Special case subject to the condition that rent charged by BIC is not at a concessional subsidised rate and the contractual agreement between you and BIC was a private matter.

2. This issues with the approval of MOF (Expenditure) I.D. Note No.2(12)/95-E.II(B) dated 22.9.2000.

Yours faithfully,

(O.P. AHUJA)
UNDER SECRETARY TO THE GOVT. OF INDIA

20. It is seen that the applicant's case has been considered as a special case and the grant of HRA is subject to the fulfilment of two conditions, namely, (a) the rent charged by BIC is not a concessional subsidised rate and (b) contractual agreement between the applicant and BIC was a private matter.

21. In support of his contention that both the conditions stipulated in the said order dated 22.06.2001 (Annexure-11) issued by Respondent No.2 have been satisfied, the applicant's counsel as earlier noted has drawn my attention to the letter dated 3.1.2001 (Annexure-8) from the applicant to Respondent No.2 stating, inter alia, that the BIC have themselves clarified in their letter dated 24.6.1999 that the house was allotted to the undersigned and not to the department and that BIC in their letter dated 5.6.1998 have also clarified that the rent charged is not at a concessional rate.

Av

29

22. It is seen that the letter of allotment of "Mayfield" bungalow dated 24.6.1999 (Annexure-3) from BIC to the applicant is as under:-

"(A GOVERNMENT OF INDIA COMPANY)
BRANCHES
CAWNPORE WOOLLEN MILLS BRANCH, KANPUR
NEWEGERTON WOOLLEN MILLS BRANCH, DHARIWAL

P&A/618

24-6-1999

Shri S.K. Goyal
Chief Commissioner of Income-Tax
Kanpur.

Dear Sir,

With reference to your letter dt. 18-6-99 for allotment of our Mayfield Bungalow, 10/463 Khalasi Lines, we allot the above Bungalow to you. The tenancy of the said Bungalow will be in your personal name and all the obligations relating to the said tenancy will be yours and not of the Income-tax Department. This tenancy will continue till your posting at Kanpur and after transfer from Kanpur to some other station, you will handover the peaceful and vacant possession of the said Bungalow to us.

During the period of your occupation, you shall pay to us rent @ Rs.650/- (Rupees Six hundred fifty only) per month. In addition, you will be liable to pay electricity charges directly to the KESA. As and when the Bungalow is vacated, vacant possession of the said Bungalow alongwith its inventory may kindly be delivered to us.

Thanking you,

Yours faithfully,
FOR THE BRITISH INDIA CORPORATION LTD.,

(Ram Lautan)
GENERAL MANAGER (P&A)

AV

23. The certificate from BIC dated 5.6.98
(Annexure-4) is as under:-

"(A GOVERNMENT OF INDIA COMPANY)
BRANCHES
CAWNPORE WOOLLEN MILLS BRANCH, KANPUR
NEWGERTON WOOLLEN MILLS BRANCH, DHARIWAL

June 5, 1998

TO WHOM-SO-EVER IT MAY CONCERN

This is to certify that the rent charged at the rate of 650/- per month in respect of 'Mayfield Bungalow, 10/463; alas lines, Kanpur is not at concessional rate keeping in view the fact that the British India Corporation Ltd. is not an organisation to maintain or repair the old and dilapidated house in view of its financial constraints.

Moreover, the Corporation did not want to let it out to any person residing at Kanpur permanently or to Income-tax Department if the tenancy rights could have been created against the Corpn.

The rent has been fixed keeping in view the fact that the said Bungalow has been given only on a temporary basis to a very senior Govt. servant who holds tenure of his office at Kanpur for very short period.

It would also not be out of place to mention that the said Bungalow had been occupied twice and vacated twice in the last two years and is again likely to be vacated in very near future.

The above clearly shows that the letting out of the 'Mayfield' Bungalow to Shri B.P. Gupta was purely a private arrangement.

For THE BRITISH INDIA CORPORATION LTD.,

(K.K. Misbra)
GENERAL MANAGER(P&A)"

[Handwritten signature]

24. Contents of the aforesaid certificate of the rent charged @ Rs. 650/- per month in respect of the same bungalow to one of the applicant's predecessor, namely, B.P. Gupta shows that the said amount is not a concessional rate for the reasons given therein. The same amount of Rs.650/- was being charged from the applicant also as monthly rent for the very same bungalow. Moreover, the respondents themselves in their reply in Para 5.1(a) have stated inter alia that in Kanpur the Chief Commissioner of Income-tax and the Commissioner of Income-tax have been allotted big bungalows by the BIC as per practice being followed for the long time and that the BIC has many assets in the form of bungalows, factories and other buildings.

25. Even assuming that the bungalow in question is public premises, the respondents have not been able to show as to how that the Public Sector undertaking is not competent to enter into private rental agreement with a person who is a Government servant in his personal or private capacity or as to what are the legal or procedural requirements, if any, to be complied with in case of private/rental agreement. On the other hand, they themselves had admitted as seen supra. that such agreements are being executed between the BIC and the departmental officer since a long time. If such agreements are considered to be illegal, improper and irregular, the respondents ought have taken appropriate steps to stop such practice long time back. Instead, they had allowed such practice to continue.

AV

23

26. The respondents have also admitted in Para 5.1(b) of their counter that "However, the agreement of the allotment was between BIC and Shri S.K. Goyal (i.e. the applicant) as an individual". While stating that this was done in view of observations made in sub-para(c) below, they themselves have admitted in the said sub-para(c) inter alia, "As Govt. of India generally does not borrow the accommodation of the Public Sector undertakings or State Govts. as it has its own departmental as well as general pool residential accommodation of different grades, therefore, in a few cases the PSU's have provided accommodation mostly to senior Govt. officers with the agreement in individual capacity of the officers."

27. Regarding the question of allotment of the bungalow to the applicant at a concessional rate, the respondents in their reply in Para 5.1(c) have stated inter alia that the prevailing minimum market rent for that bungalow consisting of land approximately three acres will not be less than 20,000/- whereas the monthly rent paid by the applicant, namely, Rs. 650/- is definitely a concessional rent charged by BIC. However, they have not given any material or document etc. which supports the above statement and there is nothing in their reply to establish that the certificate dated 5.6.1998 given by the BIC (Annexure-4) referred to earlier regarding the old and dilapidated condition of the bungalow itself or the amount of monthly rent of Rs.650/- for the said bungalow being not a concessional

[Handwritten signature]

9/11

-16-

rate is not correct and that the contents of the representations submitted by the applicant in this regard have been duly considered by Respondent No.2 before coming to the conclusion that the above monthly rent of Rs. 650/- is a concessional rent.

28. In view of the above, I am of the considered opinion that the respondents stand that the monthly rent of Rs. 650/- charged by the BIC is a concessional rate is unsustainable in the eye of law and hence cannot be accepted.

29. Regarding the respondents' contention that as per the provisions of the OM dated 27.10.1994 (Annexure-16 of the OA), employees who are posted in the Centre and stay temporarily in State Bhavans/Guest Houses run by the State Govts/autonomous Organisations may be reimbursed the amount of rent paid by them in excess of 10% of their basic pay or the HRA admissible to them whichever is less, but the applicant had paid Rs.650/- as monthly rent which was less than 10% of basic pay drawn by him and hence he has not fulfilled condition No.1 *ibid*, it is seen on a perusal of the said O.M. that it pertains to "reimbursement of rent to Govt. servants during their stay in State Bhavans/Guest Houses run by State Govt./Autonomous Organisation etc.". While so, respondents themselves have admitted *supra* that the BIC owns several lands, buildings etc., and there is no material/evidence placed on record by the respondents to establish that the bungalow in question

AN

is either a State Bhawan or a Guest House run by State/Autonomous Organisation.

30. Rule 4 of HRA Rules and the ID Note dated 03.03.1999 on which reliance is placed by the respondents (Para 9 supra) obviously are not applicable to the facts of the present case in view of what has been stated above.

31. In view of the above, I am of the opinion that the aforesaid contention of the respondents is totally devoid of any merit as the O.M. dated 27.10.1994 (Annexure-16) itself is not applicable to the present case by any stretch of imagination. I find that the impugned order dated 22.6.2000 (Annexure-11) issued on the basis of the aforesaid O.M. dated 27.10.1994 (Annexure-16) is not applicable to the applicant's case at all.

Read as
22.6.2001
vide order
dt. 21.3.2003

afm

32. In the peculiar facts and circumstances of this case and in view of the forgoing discussion I am of the opinion that the said impugned order dated 22.06.2000 (Annexure-11) issued by Respondent No.2 denying HRA to the applicant is vitiated by a total non-application of mind and lack of any factual or statutory authority or basis. Such an order cannot be sustained in the eye of law.

Read as
22.6.2001
vide order
dt. 21.3.2003

afm

33. In the result, the impugned order dated 22.6.2000 (Annexure-11) is quashed and set aside. The

Read as
22.6.2001
vide order
dt. 21.3.2003

afm

24

respondents are directed to ⁻¹⁸⁻pass an appropriate order in the light of the above order granting HRA to the applicant for the concerned period at the rates applicable under the relevant rules within two months from the date of receipt of a copy of this order.

34. The OA is disposed of as above. No costs.

A. Vedavalli
8/11/2003

(Dr. A. Vedavalli)
Member(J)

/vv/