

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA No.932/2001

Thursday, this the 20th day of December, 2001

HON'BLE MR. S.A.T. RIZVI, MEMBER (ADMN)

R.C.Rajpal ..Applicant  
(By Advocates: Shri G.S.Chaman & Shri H.K.Gupta)

Versus

Union of India & Anr. ....Respondents  
(By Advocate: Shri R.N.Singh)

Corum:-

HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

1. To be referred to the reporter or not? YES
2. Whether it needs to be circulated to Benches of the Tribunal? NO

  
(S.A.T. Rizvi)  
Member (A)

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(10)

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Thursday, this the 20th day of December, 2001

Hon'ble Shri S.A.T. Rizvi, Member (A)

R.C.Rajpal  
S/O Shri A.L. Rajpal  
R/O 512, Sector-28, Faridabad  
Haryana.

..Applicant

(By Advocates: Shri G.S.Chaman & Shri H.K.Gupta)

Versus

1. Union of India through  
the Director  
Intelligence Bureau  
Govt. of India, Ministry of Home Affairs  
Central Sectt., North Block  
New Delhi
2. Deputy Director  
Subsidiary Intelligence Bureau  
Ministry of Home Affairs, Ita Nagar  
Arunanchal Pradesh

..Respondents

(By Advocate: Shri R.N.Singh)

O R D E R (ORAL)

Applicant, who is an ACIO-I (WT), joined his duties at Ita Nagar on 16.5.1995. Prior to his transfer, he was posted at New Delhi. He has been brought back again to New Delhi in the same capacity. He joined at New Delhi again on 16.8.2000. When transferred to Ita Nagar, he was relieved of his duties at New Delhi on 30.4.1995. Similarly, when he was transferred back to New Delhi, he was relieved at Ita Nagar on 31.7.2000.

*Corrected w/c  
order dt 14.3.02*

*19.3.02*

The applicant has claimed payment of additional HRA from 1.5.1995 to 15.8.2001. During the aforesaid period, his family/dependents resided at 512, Sector-28, Faridabad in the State of Haryana. The aforesaid house is owned by the applicant. During his New Delhi posting prior to his transfer to Ita Nagar, he was residing in the same house in Faridabad (Haryana) along with his family, and was

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also drawing HRA permissible under the relevant rules. His claim for the payment of additional HRA in respect of Faridabad residence where his family/dependents are stated to have lived during his posting at Ita Nagar has been rejected lastly on 13.6.2000 (A-1) on the ground that enquiries discreetly made revealed that no member of the applicant's family had stayed in the aforesaid house in Faridabad during the period in question. The enquiries discreetly made had also revealed that the father of the applicant used to come to the aforesaid house in Faridabad once in a month. The applicant's case is that his family members, namely, his parents together with his two daughters were staying in the aforesaid house and accordingly, the aforesaid house had been put to bonafide use of the members of the applicant's family. The applicant has also stated that the aforesaid family members of his were also, in the circumstances, living in his previous place of posting, and, therefore, additional HRA was admissible to him. The aforesaid order dated 13.6.2001 (A-1) has been impugned by the applicant in the present OA. He prays that the aforesaid OM together with all other OMs similarly issued on earlier occasions be quashed and set aside and the respondents be directed to pay additional HRA @ 600/- PM with licence fee for the entire period from 1.5.1995 to 15.8.2000 along with interest calculated @ 18%.

2. I have heard the learned counsel on either side at length and have also perused the material placed on record. *Q*

3. The learned counsel appearing on behalf of the respondents has, in support of the respondents' case, relied on the provisions made in OMs dated 29.3.1984 and 25.5.1996 reproduced in Swamy's Compilation of FRSR Part-V (HRA & CCA) (corrected upto 1.12.1988). The aforesaid OMs provide that Central Govt. employees who were in occupation of hired private accommodation at the last station of posting before transfer to any of the States/Union Territories may be allowed to draw House Rent Allowance admissible to them at that station. The States and the Union Territories included, for the purpose of aforesaid concession, are Assam, Meghalaya, Manipur, Nagaland and Tripura and the UTs of Arunanchal Pradesh, Mizoram and Andaman & Nicobar Islands. The aforesaid concession would be available even where the families of the Central Govt. servants resided in the houses owned by the Govt. servants themselves. That the applicant in the present OA had kept his aforesaid family members in his own house at Faridabad is not in dispute. What is disputed, on behalf of the respondents, inter alia, is that the aforesaid family members of the applicant did not reside, during the period in question, at the last station of applicant's posting which was New Delhi and not Faridabad.

4. In support of the applicant's claim, the learned counsel appearing on his behalf contends that since the applicant had been drawing HRA in respect of the aforesaid Faridabad residence even while he was posted at New Delhi, payment of additional HRA in respect of the same location cannot be denied to him. The fact that the

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applicant was allowed to and was indeed drawing HRA in respect of Faridabad residence during his posting at New Delhi has not been disputed by the respondents. On behalf of the applicant, reliance has also been placed on the OM dated 20.12.1989 by which the phrase "same station" in relation to its application for the grant of HRA/CCA has been clarified. The aforesaid OM has been reproduced in Swamy's Annual 1989 (Compendium of Orders on Service Matters) published in July, 1990. By the aforesaid OM, the phrase "same station" occurring in para 5 (c)(iii) of the OM dated 27.11.1965 is sought to be clarified. According to the aforesaid OM dated 20.12.1989, the phrase "same station" includes all places which are treated as contiguous to the qualified city/town in terms of para 3 (a)(i) and those dependent on the qualified city/town in terms of para 3 (b)(ii) and 3 (b)(iii) of the aforesaid OM dated 27.11.1965, and also those places which are included in the Urban Agglomeration of a qualified city.

5. I have considered the matter in the light of the aforesaid provisions and have also kept in view the patent fact that the applicant was allowed to draw HRA in respect of his Faridabad residence even when he was actually posted in New Delhi. There is little substance in the respondents' plea that while HRA could be paid to the applicant in respect of Faridabad residence while he was actually posted at New Delhi, the additional HRA could not be paid in respect of the same residence for the period from 1.5.1998 to 15.8.2000. According to the learned counsel for the respondents, the words "at the

last station of posting before transfer" used in the aforesaid OM dated 29.3.1984 imply that the accommodation in respect of which additional HRA is claimed must be located in the last station of applicant's posting, and since the last station of his posting was New Delhi, a claim for additional HRA in respect of Faridabad residence cannot be entertained. According to him, the clarification rendered in respect of the phrase "same station" as above will not apply in the context of payment of HRA in accordance with the provisions of the OM dated 29.3.1984. I do not agree. The aforesaid clarification has been issued, after all, much after the OM dated 29.3.1984 had been issued. Both the aforesaid OMs deal with and relate to the grant of HRA. Hence the aforesaid clarification in respect of phrase "same station" is, in my view, very much relevant in the context of the provisions of OM dated 29.3.1984. Besides none of these OM appears to refer to the other implying thereby that the provisions made could be mutually applied on a shared basis, except to the extent of repugnancy. No such question is likely to arise in the present situation. I thus conclude that even while living in Faridabad residence, the aforesaid family members of the applicant could be said to have been living in the same station in which the applicant was posted prior to his transfer to Ita Nagar. The aforesaid conclusion is re-inforced by the admitted fact that HRA was permitted to be drawn by the applicant in respect of the same residence at Faridabad even though the applicant was then actually posted at New Delhi. )

6. Insofar as the contention raised on behalf of the respondents that Faridabad residence was not put to bonafide use of the aforesaid family members of the applicant is concerned, the learned counsel appearing on his behalf has submitted that a proper investigation has never been made into the allegation that the aforesaid family members of the applicant did not reside in the Faridabad residence. The respondents, according to him, relied entirely on certain enquiries discreetly made by the respondent-authority. The details of such enquiries have not been revealed. The applicant has not been put to notice for explaining the situation in the light of the facts and circumstances revealed during the course of enquiries discreetly made. Furthermore, at least on one occasion, namely, on 17.6.1997 (A-4), a Memorandum has been issued by one of the officers in the respondents' set up admitting therein that the applicant was found to have been keeping his family at Faridabad. The respondents cannot be allowed to disown the aforesaid letter of 17.6.1997. The aforesaid letter of 17.6.1997 will obviously prevail over the contents of respondents' Memorandum dated 12.6.1995 (R-2) which has been issued after making discreet enquiries into the matter. Moreover, the outcome of the aforesaid discreet enquiry, as brought in the aforesaid Memorandum, clearly brings out that at least one room of the Faridabad residence was in the applicant's custody and was being used off and on by his family members whenever they visited Faridabad. The rest of the aforesaid residence was stated to have been given out on rent to one Mrs. Punj some 4 to 5 months before the aforesaid Memorandum was issued. This,

on the face of it, cannot be true as the applicant shifted to Ita nagar on transfer only after being relieved on 30.4.1995 at New Delhi and prior to that he was admittedly living in the same Faridabad residence with his family. No reliance can, in the circumstances, be placed on the aforesaid Memorandum dated 12.6.1995 (R-2). Yet another enquiry discreetly made, to which a reference has been made in respondents' Memorandum dated 4.6.1999 (running page 72 of the paper book), revealed that at that point of time one Smt. K.Sachdeva was residing in the applicant's Faridabad residence along with her children and that the applicant's family was then living either with the applicant himself or with his parents. This enquiry also fails to point out the place where the applicant's family could be living at the material time. It could not have been difficult for the respondents firmly to ascertain whether they were living with the applicant himself and, in case they were living with his parents, the location thereof could also be ascertained without difficulty. Reliable enquiries in this regard could also be made from the said Smt. K.Sachdeva who had claimed to be the applicant's sister. Clearly, therefore, no attempt was made by the respondents to arrive at the truth. A discreet enquiry was made once again and, to this, a reference is to be found in respondents' Memorandum dated 21.3.2000. This time, the discreet enquiry revealed that though the aforesaid Smt. K.Sachdeva had been residing in Faridabad residence for the last one and a half years, applicant's father also used to visit the house once in a month. There is, in the circumstances, an obvious contradiction

between the outcomes of the discreet enquiries reported in Memoranda dated 4.6.1999 to 21.3.2000. The aforesaid discreet enquiry also thus, in my view, fails to clear the test of reliability. The applicant's case is that of the two daughters of the applicant who used to reside with the applicant's father at Faridabad, both went out to study in collages located away from Faridabad. They could not, therefore, continue to reside firmly and continuously at Faridabad. The applicant's parents also visited places off and on and, therefore, could not be found at Faridabad all the time. On the basis of these considerations, it cannot be contended, according to the learned counsel for the applicant, that Faridabad residence had not been put to bonafide use by the applicant's family. Since the discreet enquiries made by the respondents from time to time have not been found to be reliable and the respondents have not proceeded to make a proper investigation into the matter and further have also not served any show cause notice on the applicant in the light of enquiries made, I am left with no option but to agree with the aforesaid contention raised on behalf of the applicant. In the circumstances, I hold that Faridabad residence was put to bonafide use by the applicant's family.

7. The last issue raised on behalf of the respondents is with regard to limitation. Admittedly, the applicant's request for grant of additional HRA has been rejected on several occasions. The last time it was rejected by the impugned order of 13.6.2000 (A-1). The applicant kept on filing representations after each

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rejection and the respondents have kept on issuing rejection letters by stating more or less the same grounds which have been stated in the last impugned letter dated 13.6.2000 (A-1). The learned counsel appearing on behalf of the respondents has submitted that filing of representations repeatedly over the years cannot assist the applicant in reviving limitation, and by the same token, issuance of rejection letters repeatedly one after the other stating therein more or less the same grounds cannot also revive limitation. I do not agree. While it may be true that in all the rejection letters, the respondents have taken more or less the same grounds, the fact which stands out in this context is that the various rejection letters have been preceded by discreet enquiries repeatedly made. I have already referred to the outcome of two such enquiries reported in respondents Memoranda dated 4.6.1999 and 21.3.2000. Inasmuch as the rejection letters are based on the enquiries made from time to time, it cannot be said that the respondents have proceeded to reject the applicant's claim without going into the merits of the claim afresh on each occasion. This being so, I hold that the various rejection letters have been issued by going into the merits of the applicant's claim on each occasion. The rejection letters having been issued on the merits of the applicant's claim on each occasion would, in the peculiar circumstances of this case, undoubtedly revive limitation. The OA is, therefore, not barred by limitation.

8. For all the reasons mentioned in the preceding paragraphs, the relief claimed in para 8 (a) of the OA is

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allowed. The respondents are accordingly directed to make payments of the additional HRA to the applicant in terms of the aforesaid clause expeditiously and in any event within a period of two months from the date of receipt of a copy of this order. In the peculiar circumstances of this case, I do not consider it necessary to pass orders with regard to the payment of interest.

9. Before I part with this order, I find it necessary to observe that a lasting solution to such a problem must be found expeditiously as by the very nature of things, many cases of this type are likely to arise in future. Indeed quite a few similar cases may have arisen already in various Departments/Ministries of the Govt. of India. One of the options obviously is to clarify the matter in terms of the present order of this Tribunal by issuing a fresh Office Memorandum. Alternatively, the relevant rules could be amended by the competent authority by following the prescribed procedure. Fair play, justice and objectivity would seem to demand that the matters must be settled, once and for all, by the Ministry of Finance in terms of the interpretation of rules/instructions relied upon in this order.

10. The present OA is allowed in the aforesated terms. There shall be no order as to costs.

  
S.A.T. Rizvi

(S.A.T. RIZVI)  
MEMBER (A)

/sunil/