

Date	Office Report	Orders
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OA - 984/1995

03.06.1997

Present : Shri S.C. Luthra, learned counsel
for the applicants.

Shri Jog Singh, learned counsel
for the respondents.

Arguments heard. Oral order
passed separately.

(N. SAHU)
Member(A)

/Skant/

(20)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA - 984/1995

New Delhi, this the 3rd day of June, 1997.

Hon'ble Mr. N. Sahu, Member(A)

1. Shri Balmukund
S/o Leela Ram, aged 62 years
R/o Qr.94/144, Mirdard Lane,
New Delhi
2. Shri Bir Singh
S/o Shri Balmukund
Working as Nursing Orderly
in L.N.J.P. Hospital,
New Delhi
R/o Qr.No.94/144,
Mirdard Lane
New Delhi

...Applicants

(By advocate : Shri S.C. Luthra)

Versus

1. Govt. of N.C.T. of Delhi
through
The Secretary(medical)
Old Secretariat,
Rajpur Road,
New Delhi
2. Medical Superintendent,
L.N.J.P. Hospital
Jawaharlal Nehru Marg,
New Delhi - 110 002.

...Respondents

(By advocate : Shri Jog Singh)

ORDER(ORAL)

Hon'ble Mr. N. Sahu, Member(A)

In this OA the applicant seeks quashing of the impugned order at Annexure A-1 by which the respondents rejected the claim of the applicant No.2 for regularisation of the Quarter No.94/144, Mirdard Lane, New Delhi. The applicant would also be satisfied if any other quarter of Type-I is allotted to him on out of turn basis in lieu of the above. He seeks a direction to the respondents to charge normal licence fee till such accommodation is either regularised or an alternative Type-I accommodation is provided to him. Applicant No.1 worked as a Sweeper

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and superannuated w.e.f. 28.02.1994. He was initially allotted Quarter No.142, Type-I, Block-II, Maulana Azad Medical College Campus and later Quarter No.94/144, Mirdard Lane, New Delhi in the year 1973. His son, applicant No.2 has joined as Nursing Orderly under the same respondent on 16.11.1982. He was not paid House Rent Allowance from the date of appointment i.e. 16.11.1982. However, after 01.01.1984 the Accounts Department paid him the HRA till 01.04.1993 and thereafter stopped. Applicant No.2 applied to the Administrative Officer to regularise his father's Quarter No.94/144, in his name. As the claim is not covered under SR-317-B of the allotment rules, the respondents rejected the claim and directed vacation. Applicant No.1 was directed to pay market rent for one month during July, 1994. By Annexeure A-3, the applicant was directed to deposit the damage charges at the rate of Rs.1,547/- per month plus Rs.10/- per month w.e.f. 01.02.1994 till the vacation of the said quarter.

2. The respondents in their reply have brought out the payment of HRA except during the last 11 months prior to the retirement of Applicant No.1 whereas as per rules he should not have drawn HRA three years prior to the retirement of the applicant No.1.

3. Learned counsel for the applicant has filed before me an Apex Court decision in Shri Shiv Sagar Tiwari versus Union of India & Ors. wherein on similar facts in the case of T.R. Nair, 8-90,

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Sarojini Nagar, New Delhi the Supreme Court directed the Director of Estates to regularise the accommodation on deposit of the excess house rent drawn with 12% interest per annum. Learned Counsel for the applicant prays that the similar directions in his case may also be considered. He cited the decision of the Central Administrative Tribunal, Principal Bench in OA-461/1996 dated 11.07.1996 wherein on similar facts after quashing the vacation order, respondents were directed to pass a fresh order in terms of relevant rules and instructions for allotment/regularisation of the quarters. In the latter case, HRA was paid and drawn only for one month during the prohibited period.

4. I have carefully considered the submissions of the learned counsels. The basic facts are that the applicant No.2 was working as a Nursing Orderly w.e.f. 16.11.1982 and he was stated to be staying with his father Shri Balmukund for around 12 years prior to his father's retirement on 28.02.1994. Apparently it appears to be naive to suggest that the applicant did not claim but the Accounts Department paid him HRA. The crucial period is the period of 36 months prior to the date of retirement. The applicant did not receive HRA for the last 11 months but admittedly he did avail of HRA for 25 months. The other conditions are that the applicant should have been residing continuously with the retiring government servant for at least three years immediately preceding the date of retirement. The retiring government servant or any member of his family should not own a house in the

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place of posting of the applicant. The eligible dependant will be allotted government residence one type below his entitlement. However, a similar type of accommodation as the retiring government servant's will be allotted on certain conditions. The next condition is that all the dues outstanding in respect of the quarter in occupation of the retired government servant should be cleared after which the allotment to the dependant relation will be considered. As the above conditions are cumulative, I direct the respondents to verify the following:

(i) Respondents shall verify whether any member of the family owns a house in Delhi or not.

(ii) Whether the applicant had ever made any claim for HRA (emphasis supplied); and

(iii) If not, whether the payment of HRA and stoppage of payment were unilateral. If the answer is yes, the Supreme Court's ruling in T.R. Nair's case(supra.) may be applied after verification about clearance of arrears of quarters immediately after retirement.

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If all the conditions are satisfied then the applicant No.2 should be asked to refund the HRA of 25 months with an interest rate of 12% for each instalment till the date of refund. Within four weeks of the refund

of the HRA and if all other conditions are satisfied, the respondents shall consider the applicant's claim and allot a suitable accommodation as per rules and concurrently consider to review the impugned order (Annexure-A1) regarding recovery of market rent. Till the respondents pass the order after verifying and satisfying about the fulfillment of the conditions the interim stay dated 19.12.1995 continuing till this date on recovery will operate. If the respondents find that the applicant is not entitled to an ad-hoc allotment as per the above conditions and pass an order to that effect, the stay shall automatically stand vacated.

The OA is disposed of as above without any order on costs.

N. Sahu
(N. SAHU)
Member(A)

/Skant/