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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No.2694 of 1997 decided on 24.2.1999

Name of Applicant : Smt. Kusum Gusain

By Advocate : Shri B.S.Mainee

Versus


Name of respondent/s Union of India & others

By Advocate : Shri V.S.R.Krishna

Corum:

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

1. To be referred to the reporter - Yes
2. Whether to be circulated to the other Benches of the Tribunal. -No


(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2694 of 1997

New Delhi, this the 24th day of February, 1999

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

Smt. Kusum Gusain, wife of Shri D.S.Gusain, Upper Division Clerk in the office of Press Information Bureau, Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi

- APPLICANT

(By Advocate Shri B.S.Mainee)

Versus

Union of India : Through

1. The Secretary, Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi.
2. The Principal Information Officer, Press Information Bureau, Ministry of Information and Broadcasting, First Floor, Shastri Bhawan.
3. The Director General Doordarshan, Ministry of Information & Broadcasting, Mandia House, New Delhi

- RESPONDENTS

(By Advocate Shri V.S.R.Krishna)

O R D E R

By Mr. N. Sahu, Member(Admnv)

This OA is directed against the order dated 31.10.1996 passed by the Deputy Director (Admn) D.G. Doordarshan, New Delhi by which the applicant working as a UDC with the respondents was held to be not entitled to HRA. By another order dated 10.12.1996 the respondents stated that they examined the matter with the Ministry of Information & Broadcasting and Ministry of Finance and could not reconsider her request for releasing of HRA.



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2. The brief facts are that the applicant is working as a UDC since 1.5.1989 and has not been drawing the HRA under Rule 5(c)(iii) of FR SR Part V. Her husband Shri D.S.Gusain is an employee of Employees Provident Fund (in short 'EPF') Organisation, Central Office, New Delhi. Her husband has been allotted accommodation by the EPF at BN Enclave, Malviya Nagar, New Delhi. She states that the EPF organisation is not covered within the categories mentioned in Rule 5(c)(iii) ibid. Her claim is that the EPF is a statutory body and the staff quarter allotted at Malviya Nagar is a Board accommodation. She relied on the decision of the Bombay Bench of the Tribunal in the case of Smt. Sharda Gajanan Rajarshi (Smt.) Vs. Union of India and others, 10/95 Swamysnews 793(Bombay) date of judgment 26.10.1994 wherein Bombay Bench of the Tribunal was examining the applicability of Rule 5(c) ibid. In that case the applicant worked as a Senior Clerk with the Government and her husband was employed as a Registrar of Bombay University. The Bench examined whether University would fall in the same category as a Municipality or Port Trust. The Bench held that the respondents would not be entitled to disallow the claim of HRA on the ground that the husband was in occupation of a quarter provided by the Bombay University. It is urged that the EPF Organisation is a statutory body and not financed by the Government of India.

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3. After notice, the respondents submit that the EPF organisation is under the administrative control of the Ministry of Labour and performs Government functions like collection of provident fund contributions from employees of private and public sector undertakings. It also maintains and disburses the funds of the employees.

4. The applicant in his rejoinder denies that he is covered under the exclusion category. The EPF organisation is neither a Central Government nor a State Government nor a public sector undertaking. It is not a Municipality, Port Trust, Nationalised Bank or LIC.

5. I have considered the argument of the counsel appearing on both the sides. Rule 5(c)(iii) ibid is extracted herein as under -

"5(c) A Government servant shall not be entitled to house rent allowance if -

(iii) his wife/her husband has been allotted accommodation at the same station by the Central Government, State Government, an autonomous public undertaking or semi-Government organisation such as Municipality, Port Trust, etc., whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her."

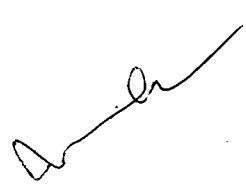
6. The excluded categories are where one of the spouse has been allotted accommodation by (i) Central Government; (ii) State Government; (iii) autonomous public undertaking; and (iv) semi-Government organisation such as Municipality, Port Trust etc. While a university is a purely statutory organisation

and the Government has nothing to do with its functioning, the EPF organisation is for all purposes, a Government organisation. Under Section 5A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the EPF Act") the Central Government constitutes a Board of Trustees, appointing almost all the members. All the officials are appointed by the Central Government. In the case of Biharilal Dobray Vs. Roshal Lal Dobrary, AIR 1984 SC 385 the Hon'ble Supreme Court had to apply Articles 191(1)(a) and 102(1)(a) of the Constitution. The Supreme Court was called upon to determine whether the applicant was holding an office of profit under the Government. Their Lordships have laid down that the true test of determination of the question whether statutory corporation is independent of the Government depends upon the degree of control the Government has over it, the extent of control exercised by and the composition of certain bodies or committees, the degree of its dependence on Government for its financial needs and whether the Corporation is discharging any function other than those of the Government. That was a case when an Assistant Teacher employed in a Basic Primary School run by Uttar Pradesh Board of Basic Education constituted under the U.P. Basic Education Act, 1972 was disqualified for being chosen as a member of the State Legislative Assembly under Article 191(1)(a) of the Constitution as he held an office of profit under the State Government. Reversing the decision of the Allahabad High Court, the Hon'ble Supreme Court held

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"Thus the Board is not an authority which is truly independent of the Government and every employee of the Board is in fact holding his office under the Government. This is not even a case of attempting to pierce the veil and trying to find out the true nature of something after uncovering it but a case where its true nature, that is, the subordination of the board and its employees to the Government is writ large on the face of the Act and the rules made thereunder." The Hon'ble Supreme Court has considered the provisions of the U.P. Basic Education Act, 1972 and for that purpose had gone through the statement of objects and reasons of the Act. Under clause 6 of the said Act the Board has been given the power to appoint officers and teachers with the approval of the State Government and the Board shall carry out such directions as the Government might issue. The Hon'ble Supreme Court held that every employee of the Board is in fact holding his office under the Government. Para 20 of the order is extracted hereunder -

"We are of the view that the present case is governed by the principles laid down by the judgment of this Court in Raman Lal Keshav Lal Soni's case (AIR 1984 SC 161) (supra). The functions of the employees of the Board are in connection with the affairs of the State. The expenditure of the Board is largely met out of the moneys contributed by the State Government to its funds. The teachers and other employees are to be appointed in accordance with the rules by officers who are themselves appointed by the Government. The disciplinary proceedings in respect of the employees are subject to the final decision of the State Government or other Government officers, as the case may be.



Q-7. Under Section 5D of the EPF Act the Central Government appoints a Central Provident Fund Commissioner who shall be the chief executive officer of the Central Board. It appoints also the Deputy Provident Fund Commissioners. The method of recruitment, salary, allowances, discipline and other conditions of service of the officials are to be specified by the Central Government. The control of the Central Government on the organisation is complete and total. The EPF organisation cannot be compared to a University. In my view it is covered by the clause "semi-Government organisation" occurring in Rule 5(c)(iii) *ibid*. In fact the respondents' counsel is correct in his argument that it is an extension of the Ministry of Labour. On no policy matter the Board can take any decision independent of the Government. I accordingly hold that the applicant is covered by the exclusion clause and the OA fails.

8. In the result, the OA is dismissed. No costs.


(N. Sahu)
Member (Admnv)

rkv.