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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO. 1599/1989

DATE OF DECISION : 14.2.92

SHRI HARI CHAND & ORS.

...APPLICANTS

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

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SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

... SHRI B.S. MAINEE

FOR THE RESPONDENTS

... SHRI P.H. RAMCHANDANI

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*

2. To be referred to the Reporter or not? *Y*

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicants are under Assistant Commandant, Central Storage, Depot and Workshop, Sarsawa, Saharanpur, U.P., who filed the joint application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order dt. 3.6.1989 passed by the Commandant, SD&W, Bhopal by which the payment of HRA @15% or 'C' class city rate to the executive staff was stopped to be paid and also ordered the recovery of over payment made to such officials.

2. The applicants have claimed the relief for quashing the aforesaid order dt. 3.6.1989 and directing the respondents to make payment of HRA, which was being paid earlier for the last so many years.

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3. The facts of the case are that the applicants are working at Sarsawa under the Director SSP-cum-Director General of Security, New Delhi. Applicant No.1 is the Senior Field Assistant, while the applicant Nos.2 and 3 are the Field Assistants. By a special order dt. 1.11.1961 (Annexure A3) of the Ministry of Home Affairs, house rent allowance has been allowed to the applicants. The applicants being in the executive staff are covered under the aforesaid instructions of the Ministry of Home Affairs because they were not employed on deputation and were, therefore, entitled to free unfurnished accommodation. The applicants were being paid HRA as has been admissible to executive staff employed on other than deputation terms in the IB/Special Police Establishments at the scale prescribed for equivalent CID/SB/IB staff of the state administration posted at the same place and if no such officer is posted at the same place at the scale that would have been prescribed by the state administration concerned if such officers were to be posted there where such accommodation is not available, house rent allowance should be paid at the rate admissible to such staff. The applicants were, therefore, being paid 10% of the pay by HRA before introduction of the new scales recommended by the 4th Pay Commission. After the 4th Pay Commission report, the applicants were being given house rent allowance w.e.f. October, 1986 as per Ministry of Finance notification dt. 23.9.1986 (Annexure A2).

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Para 3 of the aforesaid Office Memorandum is reproduced below :-

"Where H.R.A. at 15% of pay has been allowed under special orders, the same shall be given as admissible in A, B-1, B-2, class cities. In other cases covered by the special order, the HRA would be admissible at rate in 'C' class cities. In both these cases, there shall be no upper pay limit for payment of HRA."

Respondent No.3 has also confirmed the validity of the payment of HRA to the applicants vide letter dt. 17.2.1987 and the respondents in their counter admitted that it has been paid erroneously due to wrong interpretation of the Government orders. Against the stoppage of payment of HRA on the recommendations of the 4th Pay Commission's report and recovery of the arrears allegedly paid in excess, the applicants made representations and being dissatisfied, have filed this application. The respondents contested this application, but ultimately it appears that by the order dt. 9.2.1990 where sanction of the President has been given to the extension of orders contained in the Ministry of Finance OM No.110115/4/86-E-II/(B dt. 19.2.1987 as amended from time to time for payment of HRA-cum-compensation in lieu of rent free accommodation on confrere basis to the officers and equivalent to the rank of SFO and below in DG(S). It has also been ordered that existing officers will have a fresh change to exercise options within four months of the date of issue of these orders. The sanction has been with retrospective effect from 1.10.1986. In view of this order, an affidavit has been filed by the respondents on 23.2.1990 wherein it is

stated that the applicants can opt for central rates of HRA w.e.f.1.10.1986. However, it has been further clarified that the place where the applicants are posted, i.e., Sarsawa, has not been declared a 'C' class city and as such the applicants are entitled to HRA at the rates applicable for unclassified localities. It is further stated that the matter for declaring Sarsawa as 'C' class city is under consideration of the Government. However, after that no supplementary counter has been filed. Thus the respondents have admitted the payment of HRA-cum-compensatic in lieu of unfurnished accommodation to the applicants, but the matter remained in dispute regarding the rate of payment whether it is to be paid on the basis of unclassified city or on the basis of 'C' class city as per central rates.

4. Shri A.K. Behra, learned proxy counsel for Shri P.H. Ramchandani, learned counsel for the respondents has stated during the course of arguments that even classification of Sarsawa as 'B' class city is under consideration.

5. Having given a careful consideration to the various contentions raised, it is evident that the applicants are entitled to rent free unfurnished accommodation or in lieu thereof HRA-cum-compensation at the central rates. Earlier, the applicants were being paid on confere with the staff

16

of the state employees of the respective state. Thus the grievances of the applicants has been reduced only to the consideration of the fact whether the applicants are entitled to unclassified city rates of central HRA w.e.f. 1.10.1986 or on the basis of 'C' class city. Since the applicants have already been paid @ 'C' class city and the same has been confirmed by the letter No.5/4-BPL-86-87-216 dt. 17.2.1987 as stated by the applicants in para-4.13 and admitted in the counter by the respondents in the same para, though it is mentioned that there was an erroneous interpretation of the order of the Ministry of Finance in para-3 dt.23.9.1986. When once the benefits have been paid to the applicants and subsequently, the Government has also reviewed the decision and granted HRA as per central rates, the question of recovering any amount alleged to have been paid in excess does not arise. Thus the recovery of any enhanced payment to the applicant shall not be effected.

6. The learned counsel for the respondents gave a statement during the course of the arguments as well as also in the counter, it is stated that the matter is under consideration to classify the said city Sarsawa, so in view of this fact, the applicants shall be continued to be

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paid at the same rate as admissible to 'C' class city by the memo dt. 23.9.1986. However, it is made clear that if the classification of the city changes to higher class, then the applicants shall be entitled to the said benefits of HRA as are admissible to a higher class city and this order will not be a hurdle in that manner.

7. In view of the above discussion, the application is allowed and the impugned order dt. 3.6.1989 is quashed and set aside. No amount of over payment of HRA shall be deducted from the applicants and if already deducted, shall be paid back. The applicants shall also be entitled to HRA in accordance with the OM issued by the Ministry of Finance dt. 23.9.1986 as affirmed by the order dt. 9.2.1990 by Cabinet Secretariat (Annexure A-1 to the counter of the respondents dt. 23.2.1990). In the

circumstances, the parties to bear their own costs. *The respondents to comply with the above directions in 3 months from the date of receipt of this order.*

J.P. Sharma
(J.P. SHARMA)
MEMBER (J) 14.2.92