

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 2091/89  
T.A. No.

199

DATE OF DECISION 6-3-91Shri R.C. Srivastava

Petitioner

Applicant in person

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Shri P.S. Mahendru


Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

  
(Amitav Banerji)  
Chairman

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PRINCIPAL BENCH: NEW DELHI

REGN. NO. OA-2091/89

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SHRI R.C. SRIVASTAVA

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM

THE HON'BLE JUSTICE MR. AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

APPLICANT IN PERSON

FOR THE RESPONDENTS

SHRI P.S. MAHENDRU, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE  
MR. I.K. RASGOTRA, MEMBER (A))

The issue for consideration in this O.A. is whether the term "emoluments" should include full dearness allowance besides basic pay or should it be confined to addition of that part of dearness allowance which has been converted as "dearness pay", for the purpose of recovery of rent for a Railway quarter retained after transfer beyond a period of two months.

2. The issue of retention of the Railway quarter by the applicant in New Delhi pending allotment at Ghaziabad - the new station of posting was the subject matter of adjudication in OA-876/86 decided on 6.11.1987 by the Principal Bench. The Tribunal in the said order had directed:-

"that for the periods from 24.6.1985 to 23.8.1985 and 13.2.1986 to 17.5.1986 he should be charged normal rent for the Delhi House and for the rest of the period in question till 17.8.1986 or the date of vacation of the Delhi House whichever is later the applicant should be

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charged double the rent or 10% of his pay emoluments (emphasis supplied) whichever is higher, in accordance with the relevant rules. The excess recovery made from his salary should be refunded to the applicant after making adjustments against his dues in accordance with this order, within a period of three months from the date of communication of this order."

In the present OA filed under Section 19 of the Administrative Tribunals Act, 1985 Shri R.C. Srivastava who was the applicant in OA-876/86 also, has submitted that the term "emoluments" may be deemed as basic pay plus "dearness pay" at 320 CPI as defined in paragraph 1712 of Indian Railway Establishment Manual (IREM) (copy placed at Annexure-G) and accordingly the respondents be directed to refund the over recovery of rent amounting to Rs.1605.22 made from him.

3. The applicant filed RA-5/88 in OA-876/86 praying for defining the term "emoluments" used in the judgement dated 6.11.1987 as the same had not been correctly interpreted by the respondents in calculating the rent recoverable from him. The Tribunal, however, rejected the Review Application observing that "the interpretation of the term emoluments does not flow directly from our judgement, we refrain from giving any finding on this matter. Rejecting the Review Application, the Tribunal nonetheless, allowed the applicant to approach the appropriate legal forum in case he is not satisfied with the interpretation of term "emoluments" in the calculation of penal rent recoverable from him.

Thereafter the applicant filed a CCP-83/88 stating that on the basis of the Tribunal's judgement dated 19.11.1987 he was due refund of an amount of Rs.2,484.

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As against this the applicant had been charged Rs.1862.15 and a further balance of Rs.379.15 has been directed to be recovered from him. He further submitted that in accordance with the calculations made by General Manager the amount recoverable from him works out to only Rs.1227.22. The CCP was discharged with the direction "that if the applicant is aggrieved by the final calculations as indicated above he can file a fresh application vide order dated 10.6.1988."

4. The present OA is off-shoot of the above order. The applicant contends that the term "emoluments" has been interpreted by respondent No.2 as "gross pay" for the purpose of recovery of house rent in case of authorised and permitted retention of the Railway quarter. According to his understanding the "emoluments" as defined in paragraph 1712 of IREM in his case would amount to basic pay plus dearness pay at 320 points viz. Rs.1680 + Rs.370 = Rs.2050/- for purpose of recovery of house rent during the retention period in 1986 and 1987. He further contends that emoluments for authorised and permitted retention of the Government quarter has the same meaning and scope as pay, as defined in paragraph 103 (35) of Establishment Code Vol.I in the case of working employees which is reproduced below:-

" Copy of para 103 (35) of Indian Railway Establishment Code Volume I - 1985 Edition.

Pay means the amount drawn monthly by a Railway Servant as

- i.) the pay other than Special Pay or pay granted in view of his personal qualifications which has been sanctioned for a post held by him substantively or in officiating capacity or to which he is entitled by reason of his position in a cadre;

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- ii. overseas pay, special pay and personal pay  
and
- iii. Any other emoluments which may be specially  
classed as pay by the President."

The applicant referred us to the Railway Board circular letter No.F(X)1-81/11/6 dated 29.8.1981 (copy at Annexure 1) wherein the Board has distinguished the normal rent from penal rent and the market rent. The relevant portion of the said circular of the Railway Board reads as under:-

"A number of circulars have been issued in the recent past stipulating the recovery of "Normal/Penal/Market rent" for the periods specified in respect of transfer, retirement deputation, secondment etc. or on educational or medical grounds. With a view to determining "Normal rent", the Board desire to reiterate that the same should be reckoned as

i)  $7\frac{1}{2}\%$  or 10% of the pay of the employee (as applicable in individual cases) or the assessed rent of the quarter, whichever is less.

ii) "No rent" in case the employee is entitled to rent-free accommodation in terms of the service conditions.

iii) The officers and staff who are already covered under the exempted categories will continue to be charged at normal rate.

Similarly "Normal Rent" is twice the assessed rent of the quarter or 10% of the pay of the employee, whichever is higher."

In view of the above, the contention of the applicant appears to be that rent is to be recovered

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only at the rate of 10% of pay + any other emolument which are classified as pay or which may be in the nature of the pay. Thus the crucial point to be determined is as to what are the ingredients that constitute "emoluments" for the purpose of recovery of house rent. Based on his understanding and the calculations made by the Chief Personnel Officer the applicant is claiming a refund of Rs.1605.22 from the respondents.

5. The case of the respondents is that no excess recovery has been made from the applicant on account of house rent and therefore no refund is due to him. They reiterate that the recovery has been made as per the extant rules and in accordance with the judgement of the Tribunal dated 6.11.1987 and they deny that the applicant has any claim for refund of the amount of Rs.1605.22.

6. We have heard the applicant in person and Shri P.S. Mahendru, the learned counsel for the respondents. According to the Railway Board's circular letter dated 29.8.1981 penal rent is to be recovered at the rate of twice the assessed rent of the quarter or 10% of the pay of employee whichever is higher. As against the above, paragraph 2712 of IREM defines emoluments in the context of rent rules and provides that the term "emoluments" will include all allowances of the nature of pay including pension paid from Indian Revenues (whether Railways revenues or not). Some allowances like overtime allowance, night duty allowance, children education allowance have been specifically excluded from the emoluments. On the other hand, running allowance equivalent of 50% of the pay of running staff has been specifically included in the emoluments for the purpose of recovery of rent. No material has been produced before us clearly

*[Signature]*

defining "emoluments" limiting the emoluments for purpose of recovery of rent to the basic pay + dearness pay at 320 CPI. The pay as defined in paragraph 103 (35) Railway Establishment Code corresponds to the provisions made in FR 21 (a). FR 45 (A) and FR 45 (B) deal with the provisions relating to Government accommodation generally. While FR 45-C stipulates the ingredients that go into the making of "emoluments" in the following words:-

"F.R.45-C. For the purpose of Rules 45-A and 45-B emoluments" means--

- i) Pay;
- ii) Payments from general revenues and fees, if such payment or fees are received in the shape of a fixed addition to monthly pay and allowances as part of the authorised remuneration of a post;
- iii) Compensatory allowances, other than travelling allowances, (Children's Education Allowance), uniform allowance, clothing allowance, outfit allowance, uniform grant and grant for horse and saddlery, whether drawn from the Consolidated Fund of India or of a State or from a local fund;
- iv) Exchange Compensation Allowance;
- v) Pension, other than a pension drawn under the provisions of Chapter XXXVIII, Civil Service Regulations, or compensation received under the Workmen's Compensation Act, 1923, as subsequently amended;
- vi) In the case of a Government servant under suspension and in receipt of a subsistence grant, the amount of the subsistence grant, provided that if such Government servant is subsequently allowed to

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draw pay for the period of suspension the difference between the licence fee recovered on the basis of the subsistence grant and the licence fee recovered on the basis of the emoluments ultimately drawn shall be recovered from him."

It would, therefore, appear that for the purpose of recovery of house rent the emoluments would be construed as including in addition to basic pay all payments received from general revenues if such payments are in the shape of a fixed addition to monthly pay and allowances as part of the authorised remuneration of a post. It shall also include Compensatory Allowance.

In paragraph 101 of Indian Railway Establishment Code Vol. I the scope and extant of application of Railway Rules has been explained as under:-

"This chapter and the next contain rules governing general conditions of service applicable to Railway servants. Some of these rules correspond to Fundamental Rules (FR) and Supplementary Rules (SR) applicable to all Civil servants (other than Railway servants under the Indian Union who are subject to the rule-making power of the President). Again in the compendium on rulings (Indian Railway Establishment Code Vol.II, 5th Reprint) in Appendix-XXX it has been stated that:

"The decisions, rulings, orders and instructions in this Appendix are those issued by the competent authorities from time to time with reference to Fundamental and Supplementary Rules on Civil Service Regulations They have been reproduced below for guidance for applying or interpreting the rules in this volume, cross


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reference to the rule affect or given in square brackets."

In this view of the matter the emoluments would consist of basic pay + dearness allowance + other compensatory allowances except those allowances which are specifically excluded from the emoluments for the purpose of recovery of rent for the Government accommodation. There is no authority which restricts the recovery of rent for Government accommodation only to 10% of basic pay + dearness pay at 320 CPI. Further since the Railway Rules ordinarily correspond to the FR and SR and CSR, if a specific provision is not available in the Railway Rules, it will be only appropriate to draw on the FR, SR & CSR. We are, therefore, of the view that the emoluments for the purpose of recovery of rent should correspond to the provision in FR 45-C. Translated into implementation in the case before us it would mean that recovery of rent will have to be effected at 10% of the basic pay + DA + Compensatory Allowance etc., excluding those allowances which have been specifically excluded for the purpose. We, therefore, reject the contention of the applicant that the recovery of rent should be made for the period in question reckoning emoluments as basic pay + dearness pay at 320 CPI.

In view of the above, we direct the respondents to recover the rent in accordance with the above observations and if any refund thereafter is due to the applicant, the same may be made to the applicant.

The application is disposed of with the above directions with no order as to costs.

  
(I.K. RASGOTRA) 6/3/99  
MEMBER(A)

  
6.3.99  
(AMITAV BANERJI)  
CHAIRMAN