

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 332 of 1989

New Delhi this the 18th day of April, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.K. Singh, Member(A)

1. Shri G.N. Pathak
R/o 232/3, Andrews Ganj,
New Delhi.
 2. Shri R.P. Tomar
R/o B-51, South Moti Bagh,
New Delhi.
 3. Shri A.K. Singh
R/o 224-A, Pocket F, Nand Nagri,
Delhi-110093.
 4. Shri P.K. Sharma
R/o Sector-V/165,
Pushp Vihar,
M.B. Road,
New Delhi-110017.
- ...Applicants

None for the Applicants

Versus

1. Registrar General, India
Ministry of Home Affairs,
2/A, Mansingh Road,
New Delhi-110011.
 2. The Director of Census Operations,
Govt. of India,
Ministry of Home Affairs,
Gangtok-Sikkim.
- ...Respondents

None for the respondents

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Vice-Chairman

The 4 applicants before us were the officers posted at Sikkim in the Department of Census. They had been deputed there in connection with the 1981 Census. On 31.08.1987, the Deputy Director concerned conveyed to the Director of Census Operations, Delhi with a copy forwarded to one of the applicants the decision of the Home (Finance) that certain recoveries would be made from them (applicants). The said recovery was confined to 5% subsidy granted earlier to the applicants on account of their occupation of government rented building for office-cum-residential purpose during their tenure at Sikkim. Vide order dated 19.01.1989, the Deputy Director to the Ministry of Home Affairs in the Office of the Registrar General, India, conveyed that

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they did not agree to the 5% subsidy being given to the applicants and others in respect of the residential portion of the office building which was under their occupation at Sikkim. In substance, the direction was that certain amounts which became payable by the applicants, on account of the said policy of not agreeing to pay 5% subsidy, should be recovered from the applicants and others in 5 instalments beginning from the month of February, 1989. The aforesaid communication dated 31st August, 1987 and the said order dated 19.01.1989 are being impugned in the present application.

2. A counter-affidavit has been filed on behalf of respondent No.1, namely, the Registrar General, India, Ministry of Home Affairs. It will be profitable for the purpose of this case to refer to the said reply. Therein, the material averments are these. In accordance with the Ministry of Finance (Department of Expenditure) O.M. No.20014/9/75-E.IVB dated 22.03.1976, the Central Government employees posted at Sikkim are either entitled to rent free unfurnished accommodation or H.R.A in lieu thereof at $7\frac{1}{2}\%$ of the basic pay. Efforts were made to secure suitable rent free residential accommodation to be located at Sikkim on fair rent assessed by local C.P.W.D. as it was not possible at all to get the private residential accommodation out of HRA @ $7\frac{1}{2}\%$ of the Census Directorate, Sikkim. The Home (Finance) had agreed to, in principle, to a subsidy of 5% of the pay of the employees concerned in the Census Directorate, Sikkim for hiring private accommodation for residential purpose. This was then approved by the FA (Home). Accordingly, DDCO Sikkim was advised vide office letter dated 31.03.1977 to locate suitable building for hiring and for allotment to officers and staff and also to get it inspected by local C.P.W.D. and its fair rent assessed. The building so taken on rent can be allotted in such a way that rent of the portion allotted to each official lies within $12\frac{1}{2}\%$ of the pay ($7\frac{1}{2}\%$ HRA + 5% subsidy) of the official concerned. Subsequently, Ministry of Works and Housing had not agreed to the proposal for hiring

accommodation for residential purpose. On account of shortage of residential accommodation and high rental value at Gangtok, no private building could be hired (within 12½% of the pay) for the officials for the residential purpose. For the 1981 Census important preparatory work was to start but no officer was willing to go there due to non-availability of residential accommodation. However, as the 1981 Census work was very urgent and time bound, the officers/officials who were deputed from outside were allotted residential accommodation, which was far below their entitlement in the official building. The accommodation in official premises was allotted in public interest so that time bound 1981 Census work could be attended properly. The benefit of 5% subsidy was allowed with the approval of the then FA (Home) and as such, the buildings hired for the office of DCO, Gangtok were utilised for office-cum-residential purposes. 13 members of the staff were thus allotted dormitory type of accommodation which was far below their entitlement. The concerned employees were allowed subsidy during October, 1977 to September, 1986. The practice of providing residential accommodation in the office premises with 5% subsidy was discontinued after September, 1986. On the advice of Ministry of Finance (Department of Expenditure) during July, 1987 Home (Finance) had advised to make recoveries from the concerned employees who were allowed 5% subsidy in respect of residential portion at Gangtok. The concerned employees had represented against such recoveries. The proposal was again taken up with the Home (Finance) for their reconsideration. It was recommended by the Home (Finance) that since a commitment had already been given by them with the approval of the then FA (Home) and 5% subsidy was allowed in view of the special circumstances prevailing at Gangtok, it would not be fair to insist on the recovery being made. Accordingly, Ministry of Finance (Department of Expenditure) was requested to agree

to allow 5% subsidy to the members of the staff posted in the office of DCO at Gangtok in respect of residential accommodation provided to them during the period from October, 1977 to September, 1986. The proposal for waiver of recovery on account of 5% subsidy was examined by the Ministry of Finance (Department of Expenditure) and they have regretted that it will not be possible to agree to the same.

3. The applicants have categorically stated in the O.A. that the aforementioned subsidy of 5% did not form part of their pay.

4. We have considered the matter with some anxiety and we have no hesitation in recording the finding that, in the circumstance of this case, the Ministry of Finance (Department of Expenditure) have acted rather arbitrarily in turning down the request that no recovery should be made from the applicants and others in view of the fact that an understanding was given to the employees that they would be given a subsidy of 5% on account of acute scarcity of accommodation at Sikkim particularly when the FA (Home) had sanctioned such a subsidy. The applicants acted upon the said understanding to their detriment. It would be unfair and unjust if the recoveries are now made from the applicants. Furthermore, the respondents would be acting in violation of the well-known principle of estoppel. We find that the amounts recoverable from each of the applicants are really negligible.

5. Taking the totality of the facts and circumstances of the case, we are of the view that justice and fair play demands that no recovery should be made from the applicants on the basis of the impugned communication dated 31.08. 1987 and the impugned order dated 19.01.1989. We direct accordingly. We also direct that in future the respondents shall not take any steps to make any recovery from the applicants for realising any amount towards 5% subsidy during their stay


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at Sikkim.

6. With these directions, this application is disposed of finally but without any order as to costs.


(B.K. SINGH)
MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN

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