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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1762  
T.A. No.

198 8.

DATE OF DECISION 20.9.89

Shri A.B.Mathur & Ors., Applicant (s)

Shri T.C.Aggarwal, Advocate for the Applicant (s)

Versus

Union of India through Respondent (s)

Director General, All India Radio.

Shri K.C.Mittal, Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Administrative Member.

The Hon'ble Mr.

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

JUDGEMENT

Out of the three applicants in this case, the applicant No.1. has a real grievance inasmuch as the pay slip for the month of July, 1988 (Annexure A-6) indicates that (i) the payment of house rent allowance (HRA, for short) has been stopped and (ii) a recovery of Rs.1000/- has been made towards HRA, mistakenly paid in the past. The other applicants apprehend such recovery from them.

2. The facts of the case may be briefly noticed.

2.1. The High Power Transmitter, Khampur (H.P.T. for short) is a unit of the All India Radio. Applicant (1) was posted ~~here~~ as Superintending Engineer from 20.9.1985 to 29.1.1988; applicant (2) held that post from 29.1.1988 till date, and applicant (3) was Station Engineer from 1.5.1984 to 20.11.1987.

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2.2 It is admitted that the occupation of government houses is governed by the All India Radio (Allotment of Residential Quarters) Rules 1983 (Rules-for short). Respondents state that the Rules have come into force from 8th September, 1984. The Superintending Engineer, H.P.T. is the Head of Office and therefore, the Controlling Authority for the purpose of the Rules. In respect of the posts of Superintending Engineer and Station Engineer, a quarter each is attached to the post under the Rules.

2.3. The applicant (1) did not occupy the said attached quarter during the period he was posted there. He was staying in his own house. He did not, therefore, either deduct or arrange for deduction of licence fee from his monthly salary. He was also receiving HRA during the said period and thereafter, in respect of the occupation of his own house.

2.4. However, in the pay slip (Annexure A-6) for July, 1988 of applicant (1), the payment of HRA has been stopped and a recovery of Rs.1,000/- has been ordered towards HRA and licence fee in respect of his tenure at the HPT Khampur. The applicant (1) challenges these actions on the following grounds:-

- (a) Though a quarter is attached to the post he held in the HPT, it was never allotted to him.
- (b) The quarter, in any case, was not fit for inhabitation.
- (b) For these reasons, he did not occupy the house and the Respondents were aware of this fact.
- (d) That apart, he having his own house, is not eligible under the Rules to the allotment of a quarter.
- (e) In the circumstances, he is entitled to receive HRA for staying in his own house and not occupying

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a Government quarter.

(f) Therefore, no recovery can be made from him towards licence fee for the quarter **attached** to the post he held in HPT. Similarly, no recovery of the HRA already paid to him during that tenure can be made.

(g) In any case, the second proviso to subrule 2 of SR 317-XXVI-T-6 dealing with penalties on non-acceptance of allotment (for brevity's sake Rule T-6, - which simplified form will be adopted for other Rules also) provides that the provisions of that sub-rule will not apply to persons exempted by a general or special order from that sub-rule.

4. In their reply, the Respondents have contended that the applicants are not entitled to the reliefs prayed for. For, according to Sub-rule (1) of Rule T-6, the applicant (1) will be considered to be in occupation of the quarter during the period of his incumbency. Therefore, despite his non-occupation of that quarter, he will be liable to pay licence fee thereon. It is this sub-rule which applies to the applicant, and not subrule 2 of Rule T-6 and the second proviso <sup>thereto,</sup> as claimed by the applicant. The applicant was the Controlling Authority himself and it was his duty to have allotted the house to himself. He had failed to do this deliberately. Further, there is no provision in the Rules to exempt an officer having his own house from occupying an attached quarter. As he is required to occupy a govt. quarter, he is not entitled to any HRA.

5. I have heard the learned counsel of either side and perused the records carefully. The issue raised calls for an interpretation of the relevant Rules, which may first be noticed.

6. These Rules have been made by the President of India in exercise of the powers conferred by rule 45 of the Fundamental Rules. These Rules are notified by way of

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an amendment to the Supplementary Rules made under SR 45. The amendment consists of adding "Division XXVI-T" in Part VIII of the Supplementary Rules after S.R. 317. The All India Radio (Allotment of Residential Quarters) Rules, 1983 thus framed are self-contained. They came into force from 8-9-1984, as stated by the counsel for the Respondent. Rule T-16 repeals all other rules in force before the commencement of these Rules. The following provisions may be noted.

(i) Rule T-2 deals with definitions. Rule T-3 is concerned with eligibility of allotment of a quarter. The expression 'allotment' ~~thereof~~ is defined in Rule T-2 to mean - unless the context otherwise requires - the grant of licence to occupy a quarter in accordance with the Rules. The proviso to Rule T-3(1) restricts the allotment of the quarters attached to the High Power Transmitter to the staff of that HPT only. Subrule 2 of Rule T-3 ordains that an officer governed by these Rules, shall not be entitled to allotment of a quarter if his spouse has already been allotted a quarter at the same station from any other pool controlled by the Central Government or a local body or a public sector undertaking. Rule T-3 does not render a person ineligible for a quarter if he has a house of his own.

(ii) Rule T-4 deals with distribution of accommodation. Firstly, at the HPTs, quarters are attached to the posts of Superintending Engineers and Station Engineers. The details are given in the Third Schedule. Secondly, at the AIR Stations other than the HPTs, a quarter "shall be earmarked for allotment" to the Controlling Authority (i.e. the authority specified in the Second Schedule) and to certain other officials. If an earmarked quarter is likely to remain vacant for a minimum of three months, it may be allotted to any officer under Rule T-12, which deals with allotment of high/lower type of quarter under special conditions. Thirdly, quarters at the Transmitting Camps

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and receiving camps, specifically built for the security guards, shall stand allotted to the posts. The remaining quarters shall be distributed to the fourth category i.e. the shift duty pool and general pool. The quarters in these two pools shall be allotted on the basis of 'priority dates.'

(iii) Rule 7.5 deals with maintenance of roster for allotment. It directs that officers eligible for allotment of a quarter shall **apply** to the Controlling Authority in the specified in the Fourth Schedule. That form ~~form~~ contains a declaration that the applicant does not own a house in his name at the <sup>place</sup> ~~place~~ of his posting. The Controlling Authority is required to prepare a roster on the basis of 'Priority Dates' separately for shift Duty Pool and General Pool. The allotment will be made in accordance with the ~~place~~ of the individual officer in each roster.

(iv) Rule T-6 is the crucial rule and is reproduced in **extenso**:

- "S.R.317-XXVI-T-6 Penalties on non-acceptance of the allotment. (1) The incumbent of a post to which a quarter has been attached shall be considered ~~during~~ the period of his incumbency and shall be liable to pay ~~any~~ licence fee thereon unless the allotment is cancelled. **to be in occupation of the quarter**
- (2) In cases when the allotment made (on the basis of the roster drawn up) by the Controlling Authority is refused or the quarter is surrendered after accepting, the officer shall be liable to the following penalties from the date of allotment of the quarter;
- i) He shall be debarred from allotment of quarter for a period of one year.
  - ii) The house rent allowance shall ~~not be~~ **admissible** to him for the period he remains debarred from further allotment of accommodation.

Provided that the name of the officers debarred will remain on the roster after the expiry of the debarred period;

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Provided further that the provisions of this sub-rule shall not apply to persons in respect of whom a general or special order is issued by Govt. from time to time exempting them from the operation of this sub-rule for any specified period.

u the EXPLANATION: The penalties under this rule shall cease to have effect when the officer concerned is transferred from the Station.

(v) Rule T-8 deals with licence fee. It does not indicate the rate, but states that the liability to pay the licence fee commences from the date of occupation or from the eighth day from the receipt of the allotment, whichever is earlier.

(vi) Rule T-15 deals with Miscellaneous provisions - Sub-rule 6 vests the powers to ~~relax~~ the provisions of the Rules in Govt.

7. The applicants have alleged in para 6(xii) of the application that the HPT quarters are unfit for occupation by the staff due to the utter lack of provisions of amenities etc. It is also alleged that this was admitted by the Respondents. This has been vehemently denied by the respondents. It was pointed out by them that the applicant-1 had never informed the Respondents that the quarter attached to his post was unfit for occupation or for allotment. On the contrary, as soon as he took over, he wrote a letter dt. 14-10-1985 to the Director General, All India Radio (Annexure A-3) seeking permission to stay in his own house and therein, no such reason has been assigned in support of his request. In fact, the request is to mainly permit the applicant (1) to stay in his own house to avoid disruption of the existing convenience. Even the minutes of the meeting taken by the Chief Engineer, the from the office of the Director General All India Radio, on 1-8-1977 (Ex.A-4), on which the applicant-1 heavily relied, does not state that the quarter attached to the post of the applicants, was unfit for occupation. However, In further proof of the fact that the house was not fit for occupation, the applicants counsel draw my

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attention to the representation **he had** made (An. A.7) and the annexure II thereto showing the details of the occupation of the house from 28-8-1959 till 1987. In these 28 years the quarter remained occupied only for about 10 years. The counsel for the Respondents rightly pointed out that the compulsory attachment of a quarter to the post held by the applicant (1) was made by Rule 4 from September 1984<sup>only</sup>. Therefore, non-occupation prior to 1984 is of no significance. That apart, the very fact that **immediately** before the framing of the Rules, the quarter was occupied from 10-8-82 to 30-4-88 proves that it was not <sup>un</sup>inhabitable. I agree that the Respondents have a strong **case** that the reason for non-occupation is not that the quarter was unfit for occupation, but that the applicant-(1) felt it more convenient, on personal grounds, to stay in his own house. In the circumstances, ~~there~~ was no justification for not occupying the house on the ground that the house was unfit for occupation.

8. The next plea taken by the applicant-1 is that the house attached to the post held by him was never allotted to him. A perusal of the Rules summarized or extracted above shows ~~that~~ the quarters are attached to certain posts. It is clear that, in such cases, no allotment is needed at all. The **moment** an officer assumes that post, he is automatically entitled to occupy the quarter attached to that post. The appointment order itself acts as the allotment order. A separate allotment is not **necessary**. Allotment has to be separately made only for shift duty pool or general pool quarter or far 'earmarked' quarter which may remain vacant for more than three months **and has, therefore, to be allotted.**

The respondents averment <sup>is</sup> that like all others, the applicant (1) too ought to have made an application for allotment. They maintain that if an allotment was not made, the responsibility for this **lies squarely** on the applicant(1) himself, because he was himself the Controlling Authority.

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He ought to have made the allotment himself. He cannot be permitted to take the plea, that as the quarter was not allotted, he is not liable to pay rent. I am not persuaded to assume that an officer **holding** a post to which a quarter is attached is also required to apply for the quarter. I am therefore of the view that there *U applicant's culpability in* **non-allotment raised by** is no force in the plea of the applicant (1).

9. His next contention, that as he was owning a house, he was disentitled to the allotment of a quarter - vide the declaration in the Fourth Schedule - has also no substance. That declaration holds good only if a house has to be 'allotted'. It has already been **held** that an attached quarter need not be allotted to the officer who has assumed charge of the post to which the said quarter is attached. The attachment is irrespective of whether **or not** the officer has **his** own house.

10. The first applicant's contention that he is not liable to pay licence fee for the attached quarter as he did not occupy it is not sustainable. As the quarter is attached to his post, he is deemed to have occupied <sup>it</sup> from the date **he** assumed charge of the post. The act of assuming charge carries with it an automatic allotment of the quarter, without anything more requiring to be done. Therefore, the */is* first applicant liable to pay the rent from the date of deemed occupation under Rule T.8.

11. This is reiterated in sub-rule (1) of Rule T.6.

If, despite the attachment of the quarter to certain posts, the **holders** of those posts **do** not occupy those posts, they would, nevertheless, be bound to pay the rent as they will be considered to be in occupation *U of the attached posts* during the period of their incumbency. This provision applies to the present case also.

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12. The learned counsel of the Respondents contended that for operational reasons, it was necessary for the applicant to reside in the attached quarter. This statement has not been made in the pleadings. It does not also necessarily **flow** either from Rule T-4, which makes a provision for the attachment of the quarter to the post held by applicant (1) **or** from Rule T-6 which is attracted only if the quarter is not occupied despite allotment. Nor is there any other provision in these Rules **stating** that, besides the penalty under Rule T-6, a person who does not occupy an attached house, renders himself liable to disciplinary proceedings on charges of say, dereliction of duty or exposing the plant and **machinery** to grave danger by such non-occupation of the attached quarter. On the contrary, Rule T-6(1) provides that the penalty specified therein may not be imposed if the "allotment" of the attached quarter to the incumbent of the post to which it is attached is <sup>a</sup>cancelled<sup>n</sup>. In the context in which the expression "allotment" is used in this subsection, it does not refer to the allotment normally made on an application, made in the form specified in the Fourth Schedule. The cancellation of allotment refers to the permission that may be granted to the incumbent of the office<sup>n</sup> to reside at a place **other** than the attached quarter. <sup>an</sup>Such exemption can be granted under Rule T-15(6). Unless such exemption has been granted the penalty specified in Rule T-6(1) will be leviable. <sup>4</sup>Therefore, the need for compulsory physical occupation is not established.

13. The foregoing analysis shows (1) that there was a quarter attached to the post of Superintending Engineer held by the applicant-1 at the HPT during the period 20-9-85 to 29-1-88, (ii) on his own admission, the applicant did not reside in that quarter but **lived** in his own house; (iii) no exemption was granted to him to live thus, involving a

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temporary detachment of the quarter from the post he held and thus cancelling the 'allotment' implicit in his taking charge of that post; and (iv) therefore, he is rightly considered to be in occupation of the quarter during his incumbency and thus liable to pay licence fee according to law.

(14. I now proceed to consider the next question viz. whether, in the circumstances mentioned in the previous para, the applicant was, nevertheless, entitled to HRA in respect of his occupation of his own house during the period of his incumbency in the HPT. The provisions of the Rules which apply to normal allotment may be seen. Rule T.3 dealing with eligibility for allotment of a quarter does not state that persons occupying houses at the station they are posted, are ineligible for allotment of quarters. Nevertheless, the Declaration to be signed by the applicants in the form specified in the Fourth Schedule seems to suggest that persons who have their own houses are ineligible for allotment.

15. The case of applicant (1) is <sup>however</sup> not governed by these ordinary provisions. He is entitled to occupy an attached quarter. The attachment made under Rule 4(1) is regardless of the fact whether the incumbent owns a house at the same station or not. Whether he occupied the quarter or not, he has to pay the licence fee for the quarter. Therefore this is a case, where, a person owning a house of his own, is compelled by the Rules to pay rent for the attached quarter, though he **he had not physically occupied it.**

16. It has to be examined whether the Rules contained any provision as to **how** HRA is to be regulated in such cases. There is no Rule directly dealing with this issue. Some light is thrown on the issue by sub-rule 2 of Rule T-6. That sub-rule deals with allotments made on the basis of the roster draw

up under Rule 5. This sub-rule provides that if the allotment of a quarter is refused or a quarter is surrendered after acceptance, the employee shall be debarred from allotment for one year and during this period he shall also forfeit the HRA.

17. *Q of the applicant* The learned counsel claimed that HRA cannot be denied to him because the second proviso of sub-rule 2 of Rule T-6 exempts persons from operation of that sub-rule if there is a general exemption granted. It is contended that, as the general rule is that persons having houses of their own are not entitled to Government quarters, this constitutes a general exemption. Therefore, ~~even~~ <sup>he</sup> it did not occupy the attached quarter, the applicant is entitled to the HRA. Frankly speaking, this argument is not well founded. Perhaps, a general or special exemption, has to be granted under the sub-rule itself to claim immunity. In any case, even the general rule is silent on the issue under discussion. The learned counsel for the Respondents pointed out, that the Applicant (1) is governed by only sub-rule (1) of Rule T-6 and therefore, he cannot invoke the proviso under sub-rule (2).

18. *Q alone* A plain reading of Rule T-6 makes it clear that sub-rule (1) ~~above~~ applies to cases where the penalty is in respect of non-occupation of an attached quarter. It is worthy of note that sub-rule(1) does not say anything at all about HRA, <sup>in</sup> glaring contrast with the sub-rule(2), which disentitles employees from HRA for a period of one year. Disentitlement of HRA has evil consequences for the employees; therefore, there should be express provisions relating to such disentitlement or by necessary intent of the Rules, such provision has to be read therein. Whether Rule T-6 is read alone or the Rules, are read as a whole, neither such provision nor express intent is seen. Therefore, it has to be <sup>be</sup> held that in the case of an attached quarter, the failure to occupy it by the incumbent concerned, will not render him liable to forfeit the HRA if he is entitled to receive HRA otherwise; He will be liable to pay rent alone.

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19. HRA may not be given only if a Govt. employee physically occupies a Government quarter. It cannot be denied in cases of deemed occupation as in the present case. The applicant (1), has admittedly not occupied the attached quarter. He is nevertheless being compelled - rightly under Rule T-6(1) - to pay rent therefor. The HRA cannot be denied to him in such circumstances without the specific authority of law. It has to be added that the learned counsel for the Respondents did not indicate the specific provisions of law, under the authority of which Respondents have held that during his incumbency at the HPT, the applicant was not entitled to get the HRA. I am, therefore, of the view that the recovery of HRA paid during that period is bad in law.

20. That apart, the Respondents, can, no doubt, recover whatever amount is found due from the applicant (1). The recovery is to be made from **his** gross amoluments. That does not justify the Respondents' decision to stop paying the HRA due to the applicant after he has been transferred from the HPT, without giving credit for it as a recovery. It is seen that he has ceased to be posted at the HPT as on 2-9-1988. The pay slip at Annexure A-6 is for the month of July, 1988. The amount recovered is shown only Rs.1000/- under 'Miscellaneous deduction,' which is explained to be HRA. As a matter of fact, the amount recovered is Rs.1000/- plus the amount of HRA, payable for the month of July, 1988, but not paid.

21. That ~~leaves~~ only one more issue raised by the applicant viz. <sup>that</sup> he was not given an opportunity to show cause against the recovery made in Annexure A-6 and that the principles of natural justice had been isolated. A perusal of the record shows that this contention is baseless. The applicant-1 first took up this matter on 14-10-1985 (Annexure A-3) seeking

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permission to stay in his house. A reply was sent to him by the Respondent on 29-10-1985 (Annexure R-1) explaining <sup>u ka</sup> **unmistable** terms, the legal position <sup>u</sup> and the applicant was requested to take action on the <sup>n</sup> **liyes** indicated therein. Further, by the Annexure R-2 letter dt. 22-7-87 the Respondent turned down a proposal made by the applicant-1 that the quarter attached to his post be converted into a dormitory. He was also directed <sup>therein</sup> ~~to~~ pay the licence fee and furnish necessary particulars to the Pay & Accounts Officer, pay the licence fee and refund the HRA unauthorizedly drawn. To the same effect is another letter dated 29-9-1987, I am, therefore, of the view that the applicant can have no case that he was **not** given an opportunity to show cause against the recovery, which started with the pay slip of July, 1988. (Annexure A-6).

22. For the reasons given above, I am of the view that the application ~~tion~~ should be allowed in part by issuing the following directions, and, it is accordingly ordered:-

(i) The recovery of licence fee from the applicant (1) for the period 20-9-1985 to 29-1-1988 when he held the post of Superintending Engineer HPT Khampur and did not occupy the quarter attached to that post is **valid** in law. The application <sup>u</sup> made by <sup>u</sup> applicant in so far as it relates to **quashing** the proceedings concerning such recovery, is therefore dismissed.

(ii) The applicant (1) is entitled to receive HRA for the period mentioned in (i) above, as he was not in physical occupation of the attached quarter. Therefore, the Respondents are directed not to recover the HRA paid to the applicant for the period <sup>u</sup> and *refund whatever has been recovered* <sup>u</sup>

(iii) The pay slip at Annexure A-6 is quashed to the extent it is inconsistent with the direction at (i) and (ii) above. *Respondents may rectify it suitably* <sup>u</sup>

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(iv) In so far as the applicant 2 ~~and~~ the applicant 3 are concerned, the Respondents are at liberty to take such action as they may be advised under law, keeping in view the directions (i) and (ii) given in the case of applicant (1).

23. Before parting with this case, I have to point out to certain lacunae in the Rules. These concerning ~~the~~ <sup>u</sup> persons holding posts to which quarters are attached. If, in compliance with the Rules, they occupy such attached quarters, even though they have their own house at the station where they are posted, the Rules are silent on the following issues.

(i) Whether licence fee is payable, if so, at what rates? <sup>?</sup> The learned counsel for the Respondents contended that the recovery in such circumstances may have to be at market rates.

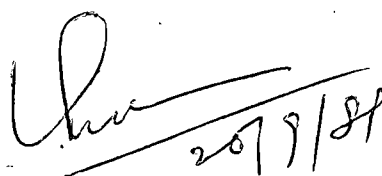
(ii) Would such officials be entitled to HRA if they occupied the attached quarter? If so, under what conditions? Does this depend on whether their own houses have or have not been let out on rent?

Without meaning to issue any direction in this regard, ~~and~~ <sup>u that</sup> I have only to observe, whatever **provisions are made**, they should not act as a disincentive to comply with the normal provisions of the Rules. It cannot be that this problem ~~has~~ arisen only in the case of the **attached** quarters controlled by the All India Radio. There are other establishments like the Railways, Postal Department and Telecommunications Department, <sup>etc.,</sup> who too <sup>u</sup> should have under their control certain quarters which would remain attached to certain posts for operational reasons. This problem must have been faced by those departments also.

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In fact, the nodal Ministry, namely, the Ministry of Urban Development, would, normally, have been seized of this problem and I am almost sure that they must have issued some instructions in this regard. Unfortunately, neither counsel has referred to any such instructions. I, therefore, direct that a copy of this order be sent to the Secretary, Ministry of Information & Broadcasting for considering these issues, in consultation with the Ministry of Urban Development.

24. The application is partly allowed, with the directions given in para 22 <sup>u</sup>supra. *These will be no order as to costs.*

  
( N.V. KRISHNAN )  
ADMINISTRATIVE MEMBER