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CENYRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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QA.No.1863 of 1988

Dated New Delhi, this the 19th day of August, 1994

Hon'ble Shri B. K. Singh, Member(A)

Kusum Late
R/o A-85
Janta Colony
Raghubir Nagar
NEW DELHI

... Applicant

By Advocate: Shri J. C. Bhutani

VERSUS

1. Lt. Governor of Delhi
through its
Chief Secretary
Delhi Administration
DELHI
 2. Director of Education
Delhi Administration
Old Secretariat
DELHI
 3. Joint Director of Education Finance
Directorate of Education
Old Secretariat
DELHI
 4. Principal
Govt. Girls Senior Secondary School
Sector-6 (First Shift)
R. K. Puram
NEW DELHI
 4. Principal
Govt. Girls Senior Secondary School
B-1, Janakpuri
NEW DELHI
- ... Respondents

By Advocate: Shri B.S. Gupta

ORDER

Shri B. K. Singh, M(A)

This QA.1863/88 has been filed against the
orders: (a) Memo No. R.K.P./90 (b) Memo No. R.K.P./130
dated 12.5.88 and 22.7.88 respectively. Both the
orders have been passed by Principal, Government

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Girls Senior Secondary School, R. K. Puram, New Delhi.

2. The material averments in the OA are these.

The applicant was appointed as P.G.T.(Maths) Teacher in the year 1973 in the Education Department, Delhi Administration, Delhi. She joined service on 24.12.73 in the Education Department, Delhi Administration. The Principal, Governemnt Girls Senior Secondary School, R. K. Puram, New Delhi issued a memo calling for certain information relating to House Rent Allowance(HRA) drawn by the applicant. This memo is Annexure-'A' of the paper book. The reply of the applicant to this memo is Annexure 'B'. Another memo issued by the Principal is marked as Annexure 'C' and the reply thereto has been marked as Annexure 'D'. The applicant submitted a representation dated 20.7.88 for revoking ~~of~~ recovery of HRA, a copy of which is marked as Annexure 'E'. The HRA of the applicant was stopped ^{she was} and directed to refund the same, as a result of which, this OA was filed in this Tribunal on 21.9.88. The Tribunal on 5.12.88 passed an interim order directing the respondents not to make any recovery of the HRA drawn by the applicant.

3. The relief sought by the applicant is to quash the impugned memos. No. R.K.P./90 dated 12.5.88 (Annexure 'A') and No.R.K.P./130 dated 22.7.88

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(Annexure 'C'). A further direction has also been sought to continue payment of HRA to the applicant.

4. A notice was issued to the respondents who filed their reply and contested the application and the grant of relief prayed for by the applicant.

5. Heard the learned counsel Shri J. C. Bhutani, for the applicant and Shri B. S. Gupta, for the respondents and perused the record of the case.

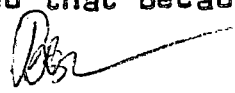
6. In the counter reply, the respondents have stated that on the basis of a complaint received in the year 1987 that the applicant's husband was a Government allottee of accommodation No.18/365, Lodhi Colony, New Delhi and the applicant was living with her husband and she was drawing HRA, an inquiry was held in the matter, giving opportunity to the applicant to state her case. It is only after receipt of submission in writing and after following due procedure of law that it transpired that the applicant actually lived with her husband and was charging HRA from Government against the rules. Rule 5(c)(iii) lays down that a Government servant shall not be entitled to HRA if his wife/her husband has been allotted accommodation at the same station by the Central Government. After inquiry and after service of a show cause and receipt of reply from the applicant, the respondents decided vide communication

dated 9.6.88 that the applicant was not entitled to HRA and that she had drawn HRA concealing this information right from ^{the date of} her appointment, and, as per rules, it was decided to recover the amount from her. The HRA was stopped with effect from July, 1988 onwards. Annexure R-1 enclosed with the counter reply is a copy ^{of} Swamy's Compilation on HRA & CCA, Section 5(c)(iii) which confirms that HRA is a form of compensatory allowance and that no HRA is payable to wife or husband if any of them has been allotted a Government accommodation at the station where both of them are residing. A perusal of the record shows that Annexure 'A' dated 12.5.88 is simply a request seeking certain information from the applicant regarding address. No grievance can arise as a result of seeking any information unless it is absolutely a private matter. This is not so in the present case. It is not understood as to how the applicant in the relief prayed for quashing of this letter since it seeks only certain information and the respondents ^{gave} an opportunity to the applicant to state her case correctly and precisely and to assist the respondents in reaching correct findings about the stoppage ~~of~~ recovery of HRA. In the counter it has been emphatically argued that memo No. RKP/130 dated 23.7.88 (Annexure 'C') was correctly issued since it is in conformity with the HRA rules and instructions which have been filed.

as Annexure R-1 annexed with the counter reply.

It has not been controverted in writing nor during the course of arguments by the learned counsel for husband the applicant that the applicant^s had been allotted Government accommodation at the same station, except with her husband. stating that she had strained relationship. The learned counsel could not rebut the charge that she was sharing the accommodation with her husband.

It is admitted by the respondents that the applicant, on return from Nigeria and after decree of divorce suit in her favour, with effect from 1.10.88 will be entitled to HRA since the decree of divorce was passed on 30.9.88. The learned counsel for the respondents argued that a harmonious reading of HRA rules, Section 5(C)(iii) show that a Government servant shall not be entitled to HRA in any of the three circumstances mentioned in 5 C(i)(ii) & (iii) of HRA Rules. The applicant's case is covered by C(iii) because her husband had been allotted Government accommodation at the same station and, therefore, she was not entitled to HRA under this rule. The learned counsel for the applicant repeatedly appealed for magnanimity of the court since she was a divorcee. No documentary evidence is available on record to show that the applicant was living separately since December, 1973 which was the basic plank of argument and the learned counsel for the applicant emphatically argued that because of strained



relationship, she did not reside in the Government accommodation with her husband and as such she was justified in drawing HRA and it should not be recovered and that recovery would cause serious hardship to her. It was further argued that the applicant was living with her two sons in her own house A-85, Janta Colony, Raghuraj Nagar, New Delhi since December, 1973 and in this connection a photostat copy of the Ration Card has been produced as Annexure 'H' of the paper book, and on this ground also she should not be asked to refund the HRA already drawn by her. The divorce suit must have been filed on 10.5.79 as is evident from the record. The order for grant of maintenance was passed by the Additional District Judge, Delhi, Shri R. D. Aggarwal in the suit filed by Smt. Kusum Lata where the address given of the applicant is: Smt. Kusum Lata W/o Shri Ravinder Pal, B-114, Single Storey, Ramesh Nagar, New Delhi. A sum of Rs. 200 was decreed for maintenance of two male children namely, Shri Gagan Pal and Shri Lovakesh Pal who were born on 26.10.70 and 30.7.72 respectively. A perusal of the record will show that the applicant was not living with her husband when the maintenance allowance was granted for two children and the address also is different from that of her husband's. The same address was shown even in the divorce suit filed in 1979 in the Court of Additional District Judge, Delhi. The learned



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counsel for the applicant also challenged the application of rule 5(C)(iii) of HRA rules as discriminatory towards women Government servants in as much as ^{it} infringes their rights of HRA ^{even} if the applicant ^{does not} share Government accommodation with her husband. It was further argued that the allotment of quarter to her husband cannot deprive her of the right of HRA since she is living in her own house because of her desertion by her husband. This rule violates the fundamental right of women Govt. servants. In this case, the applicant is a female Government servant and happens to be the wife and as such her HRA was wrongly stopped and arbitrarily she was asked to refund HRA which she had already drawn. The learned counsel for the applicant argued that good conscience, equity and justice are in favour of the applicant.

7. After a perusal of the record, it is clear that the applicant must have shared the accommodation along with her husband when the house was allotted to the father-in-law with whom his son was living and the applicant must have ^{also} resided therein. It is admitted of the applicant that the first child was born in 1970 and the second in 1972. The applicant joined Government service in 1973 and filed the suits, one for grant of maintenance for minor children which was allowed and a sum of Rs.200 was granted for maintenance of these children

and subsequently the divorce suit was decreed in her favour on 30.9.88. This divorce suit was filed in 1979 in the Court of Additional District Judge. In both the suits filed, for maintenance of the minor children and also the suit for divorce, different address has been given i.e. B-114, Single Storey, Ramesh Nagar, New Delhi. From the time Suit No.HMA No.140/79 Smt Kusum Lata Vs. Ravinder Pal for divorce and maintenance was filed, it is presumed that the applicant was living separately because a separate House No. has been given in the suit. The file nowhere indicates either in the OA or in the counter reply or even in rejoinder as to from what date she ~~started living~~ started living separately from her husband from a specific date. For want of any clear indication, the only inference that can be drawn is that she must have left her husband before filing the suit for divorce and maintenance of her minor children in 1979. From that date in 1979, whether she vacated the house of her husband, is not clear.

8. The Hon'ble Supreme Court in their ^{recent} judgement delivered on 1.8.94 have ruled that HRA cannot be claimed as a matter of right if an employee has refused accommodation allotted to him by the management. In a judgement delivered on 1.8.94



Hon'ble Mr Justice P.V. Sawant and Hon'ble

Mr Justice M. K. Mukherjee said "the management cannot be saddled with a double liability to construct and maintain the quarters as well as to pay the HRA."

9. The organisations including the Government, spend huge amount of money for constructing the quarters.


10. The Hon'ble Judges held ^{that} Government rules provide that HRA shall not be admissible to those occupying accommodation provided to them as also to those whom accommodation has been offered but who have refused to accept. While setting aside the judgement of ^{CAT,} the Hon'ble Supreme Court held that HRA is not part of pay but it is covered by the definition of compensatory allowance and has to be treated as such.

11. Although the facts in the present case are slightly different but it is uncontroverted fact that the applicant after her marriage resided with her father-in-law whom accommodation was allotted and subsequently when she joined service in 1973, she was living in the Government accommodation allotted in the name of her husband. She would have continued to live till she parted with her husband



and filed divorce suit in 1979. She was not entitled to claim HRA for the period from 1973 to 1979. ~~xxxxxx~~ ~~different address had been given by her.~~ She will be liable to refund the amount she had drawn as HRA ~~xxxxxx~~ from the date of joining of Government service till the date she vacated the house and filed the divorce suit in 1979. Respondents are well within their right to claim refund of the amount drawn by the applicant as HRA during the period she shared the accommodation with her husband from 1973 till ^{the} date she started living separately in House No.8-114, Single Storey, Ramesh Nagar, New Delhi. It would be a hardship if the respondents claim refund till the suit was decreed in favour of the applicant on 30.9.88. The applicant should volunteer to refund the amount of HRA she had drawn for the period she shared Government accommodation allotted to her husband. The respondents are directed to pay HRA to the applicant from the date she started living separately in 1979 when she filed a suit for maintenance of her minor children and for divorce. The HRA would be admissible to her from this date and she would also be liable to refund the amount from 1973 upto the date the suit for maintenance/divorce was filed.

12. With these observations, the OA is disposed of finally, but without any order as to costs.


(B. K. Singh)
Member (A)