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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

Regn. No. OA 847 of 1988

Date of decision: 13.1.1989

Shri Madan Lal Sharma

Applicant

Vs.

Union of India

Respondents

PRESENT

Shri T.C. Aggarwal, advocate for the applicant.

Shri K.C. Mittal, advocate for the respondents.

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri Madan Lal Sharma, Assistant in the Directorate General of All India Radio, Ministry of Information and Broadcasting, challenging inter alia the rules of house rent allowance to Central Government employees.

2. The brief facts, as stated in the application, are that House Rent Allowance (for short H.R.A.) is a reimbursement given to the Central Government employees to meet the abnormal expenditure its employees have to incur beyond 10% normally expected from that of a salary class. That the Central Government as a welfare measure and keeping efficiency more in view has been providing government accommodation. In case of 'Caretaker' and other categories of staff whose presence at all times is necessary, they have been provided residential accommodation in the Government office campus. Parliament employees are also provided Govt. accommodation in the nearby place. The intention had been to arrange for Govt. accommodation in the nearby place so that it may increase efficiency in service. The policy in regard to providing Govt. accommodation to the employees has all along been the same. That those Govt. servants who could not be provided Govt. accommodation, orders were issued that those living in private rented houses etc. be reimbursed in the matter of expenditure on hiring of private accommodation, maximum to the extent of their rent of the accom-

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accommodation but beyond 10% of their pay, for the admitted scale of accommodation for which ^{they} were considered entitled on the basis of their pay range. That according to Ministry of Finance's O.M. dated 27.1.65, as amended from time to time, the condition/restriction in reimbursement in the matter of rent spent by Govt. employees in hiring of private accommodation has been that if a Govt. servant sub-lets or shares a part of his accommodation with one or more adults, not belonging to his family, whether Govt. servants or not, a reduction of 40% or the actual rent charged by him from the sub-tenant/co-sharer, whichever is higher shall be made from the rent actually paid by him to the land^{lord} for the purpose of computing the amount of H.R.A. admissible to him. A reduction of 40% shall also be made where a part of the accommodation hired by a Government servant for which he claims H.R.A. is used for other than bonafide residential purposes. Before the liberalisation by IV Pay Commission, a Govt. servant was required to furnish rent receipt to be verified by Govt. in case the employee was drawing pay of Rs. 1069.00 or more. The reimbursement of H.R.A. was thereon admissible beyond 10% of the pay subject to the ceiling prescribed by the Govt. In the circumstances only the Govt. employee who had hired the private accommodation was entitled to the grant of HRA and not the other Govt. servant, his son, daughter or wife was entitled to H.R.A. in respect of the same accommodation.

A Government servant living in a house owned by him, his wife, father, children was also eligible for HRA in case the gross rental value of the house to the extent occupied by him shall be taken as the rent paid by him for the grant of H.R.A. That no Govt. servant was allowed to draw HRA in excess of the amount by which the rent actually paid by him exceeded 10% of his pay.

3. That the IV Pay Commission further examined the matter of re-imburement of house rent allowance and revised and liberalised the conditions in that HRA may be paid to all employees without requiring them to produce rent receipts. The Govt. employees will, however, be required to furnish a certificate to the effect that they are incurring some expenditure on rent/contributing towards

rent. HRA at the prescribed rates will also be paid to Govt. employees living ⁱⁿ their own houses subject to their furnishing a certificate that they are paying/contributing towards house or property tax or maintenance of the house. That according to the latest rules now a Govt. servant with the members of family who are also Govt. servants, all of them shall be eligible to the grant of H.R.A.

4. That contrary to the provision in respect of private accommodation the instructions/restrictions in cases where a Government employee shares Govt. accommodation allotted to parents, son, daughter, wife or husband is totally discriminatory, illegal and against natural justice. According to these Rules, a Govt. servant is not entitled to HRA if he shares Govt. accommodation allotted rent free to another Govt. servant or he/she resides in accommodation allotted to his/her parents/son/ daughter by the Central Govt., State Government, an autonomous public undertaking or semi-Govt. organisation such as Municipality, Port Trust, Nationalised Banks, Life Insurance Corporation of India etc. or his wife/her husband has been allotted accommodation at the same station by the Central Govt., State Govt., an autonomous public undertaking or semi Govt. organisation such as Municipality, Port Trust etc. whether he/she resides separately in accommodation rented by him/her. A husband/wife/child/parent having an independent source of income is not treated as a member belonging to the family of the Govt. servant except when such income including pension does not exceed Rs. 250.00 per month. As such, for the purpose of HRA 'Family' members of Govt. servants are to be treated as strangers. That the provision of disallowance of HRA to other related Govt. servant sharing Govt. accommodation with other family member is totally arbitrary, illegal and against natural justice because such concession is allowed in case of other Government servants sharing ~~hired~~ accommodation. If members of the same family who are Govt. servants live together in a private accommodation, they can draw HRA separately but if they live in a Govt. accommodation, the allottee Govt. servant has to pay House Rent/Licence fee for the accommodation and simultaneously the other family members who are Govt.

servants are deprived of HRA. This is a clear case of discrimination. The applicant has prayed the Tribunal to interfere and quash such arbitrary and illegal rules.

5. In their reply the respondents have stated that grant of HRA is made to Govt. servants under certain conditions. Govt. accommodation is also given to the Govt. employees depending ^{on} their length of service and pay range. The Fourth Pay Commission has recommended HRA at different rates for Govt. employees depending upon their pay ranges whether the Govt. servant is residing in rented or owned accommodation. The respondents have accepted that a Government servant shall not be entitled to HRA if he/she resides in accommodation allotted to his/her parents/son/daughter by the Central Government State Govt., an autonomous public undertaking or Semi-Government organisation such as a Municipality, Port Trust, Nationalised Banks, Life Insurance Corporation of India etc., or his wife/her husband has been allotted accommodation at the same station by the Central Govt., State Govt. and autonomous Public Undertaking or semi-Govt. organisation such as a Municipality, Port Trust etc. whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her. HRA is given for compensating the high rents that the employees have to incur for hiring private accommodation. On the other hand, Govt. accommodation that is allotted to the Central Government employees is on subsidised rents with large space. HRA is admissible only when the employees incur some expenditure on rent or contribute towards rent. In the case of Govt. accommodation being shared by husband/wife/parents/sons and daughters (and one of them is main allottee), the question of contribution or payment or rent by the sharer does not arise, in view of the relationship involved. Therefore, there is no justification to allow HRA to sharers of Govt. accommodation allotted to husband/wife/parents/son/daughters.

6. The learned counsel for the respondents raised a preliminary objection that the application is not maintainable under Section 19 of the Administrative Tribunals Act as the applicant has not

sought any specific relief in regard to his service condition. The applicant has moved the application as a 'common cause' application which is not maintainable. Shri T.C. Aggarwal, counsel for the applicant, stated that the applicant's wife is also a Govt. and she is not allowed H.R.A.

7. After hearing the learned advocates for the applicant and the respondents, it is quite clear that this case will come under the category of "common cause" and no specific relief has been sought by the applicant as such. During the arguments, it was mentioned by the learned counsel for the applicant that the applicant's wife is also working as a Govt. servant and is not getting any HRA, but this is not in the pleadings and, therefore, the question of granting any relief to the applicant's wife would not arise. The basic point involved in this application is that there is discrimination in the matter of payment of HRA to Govt. employees who share Govt. accommodation and who rent out private accommodation or live in their own house. The learned counsel for the applicant has also raised the question that in a welfare State like ours, Government must look after the welfare of the employees and rules must be interpreted liberally and all Govt. employees should be paid HRA irrespective of the fact whether they are sharing Govt. accommodation or private accommodation. The learned counsel for the applicant, Shri T.C. Aggarwal, stated that in a relationship like husband and wife, they have to live together, but the HRA cannot be disallowed ^{to both} merely because one of them has been allotted Govt. accommodation. He said that in case Govt. accommodation was allotted taking into consideration ^{living} the total salary of all the persons in the Govt. accommodation, there could be some justification for not paying HRA to all of them separately, but the total salary of all the Govt. employees in the family is not taken into consideration while allotting Govt. accommodation. The category of house allotted remains lower according to the pay scale of the person to whom the house is allotted and as such this is highly discriminatory. In other words, if there were four members in the family working in a particular

grade, say of L.D.C., and all of them were to live in one Govt. accommodation, they should be given a house taking into consideration the total salary of all the four LDCs and given a house of the type admissible on that basis and only then the HRA could be denied to all of them, but where a house has been allotted to one person, taking into consideration his salary, ^{done} there was no justification for not allowing HRA to the others. Shri Agarwal pointed out ^{to} the Supreme Court judgment in Oliga Tellis Vs. Bombay Municipal Corporation AIR 1986 S.C. 180 - mentioned in para 6 of the rejoinder by the applicant - where the court has observed that the sweep of life, conferred by Article 21 of the Constitution is wide and far reaching. 'Life', according to the Supreme Court, means something more than mere animal existence. ^{one} As such, if more than Govt. servant live in the same house, it means that they are living in great discomfort and their existence in the quarter would amount to inhuman living. As such, it is totally discriminatory that the quarter allotted is on the basis of pay of one of them when the others are not given the benefit of the size of the quarter taking pay of all the persons when such HRA is allowed where Govt. accommodation is not involved. He also pointed out that accommodation provided to displaced Govt. servants on payment of rent as fixed by the Ministry of Rehabilitation was not to be treated as Government amenities as laid down in FR 45-A read with SRs 321-326.

8. While it is admitted that Govt. is running a welfare State, it should also be understood that welfare is not limited to Government employees, but to the entire nation. Government is executing a number of schemes for the welfare of the people, specially the poor people like providing houses and house sites in the rural areas, but capacity to pay has also to be seen. This is a matter of policy and a number of Committees and Commissions are appointed by Government from time to time to examine such matters. The Third Pay Commission and the Fourth Pay Commission appointed by the Central Government have examined the question of house rent to Govt. employees and it must be admitted that

rules governing HRA have been liberalised considerably from time to time. The fact of allowing the Government servant to draw HRA without production of rent receipts is in that direction. There cannot be any comparison between Govt. accommodation and private accommodation. As is well-known, private accommodation is very expensive whereas Govt. accommodation is subsidised. The rent prescribed for the highest category of Govt. houses is Rs. 300.00 per month and that also in very good localities whereas it is well-known that it is impossible to get even a one-room set on rent on that price. If a person is lucky enough to get Govt. accommodation, he should be happy that he has been provided with subsidised accommodation and the market rent for such accommodation would be much higher than the HRA which would normally be available to a Govt. servant, his spouse or even other members of the family. But where private accommodation has been hired or where a Govt. servant has built his own house at a high cost, payment of HRA to all the members of the family would not be considered discriminatory because there is no subsidy involved in such an accommodation. As mentioned above, these are matters of policy which Government are to examine and in which no relief can be provided by the Tribunal. In the circumstances, the application is dismissed. There will be no orders as to costs.

B. C. Mathur
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(B.C. Mathur)
Vice-Chairman