

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 839/90
T.A. No.

198

DATE OF DECISION 22. 11. 90

Dr. S. K. Ghosh,

Petitioner

In person.

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri A. K. Chanana, Section Officer, ~~Advocate~~ for the Respondent(s)

CORAM :

The Hon'ble Mr. P. C. Jain, Member (Administrative)

The Hon'ble Mr. J. P. Sharma, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

MGIPRRND-12 CAT/86-3-12-86-15,000

J. P. Sharma
(J. P. Sharma)
Member (Judl.)

P. C. Jain
(P. C. Jain)
Member (Admn.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(1)

O.A. NO.839/90

DATE OF DECISION: 22. 11. 90

Dr. S.K. GHOSH

...APPLICANT

VERSUS

UNION OF INDIA

...RESPONDENTS

APPLICANT PRESENT IN PERSON.

SHRI A.K. CHANANA, SECTION OFFICER ON BEHALF OF THE RESPONDENTS.

CORAM:

HON'BLE SHRI P.C. JAIN, ADMINISTRATIVE MEMBER

HON'BLE SHRI J.P. SHARMA, JUDICIAL MEMBER.

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA)

Dr. S.K. Ghosh filed this application under Section 19 of the Administrative Tribunals Act, 1985 against the order dated 11.4.1990 (Annexure A 5), by which a sum of Rs.8,000, ordered to be recovered as HRA paid to him illegally and the amount to be deducted from his monthly salary at the rate of Rs.2,000 per month w.e.f. April, 1990. Further, the payment of HRA has also been stopped.

2. The relief claimed by the applicant is to continue the payment of HRA and refrain the respondents from recovering Rs.8,000 and the order dated 11.4.1990 be quashed.

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3. The applicant was awarded a fellow (scientist) on a fixed pay of Rs.3,400 per month by the order dated 1.9.1987 and in the terms and conditions, the HRA as well as medical charges as per Rules were also to be paid. The applicant joined Central Road Research Institute (CRRI) on 24.11.1987. The applicant was not provided any accommodation in the CRRI Colony at Maharani Bagh. As an interim arrangement, he was allowed to occupy the accommodation in the Guest House on a daily charge of Rs.4 where there were amenities of bathroom, light, water, fans and desert coolers. The applicant was also paid HRA @ Rs.600 per month. The applicant continued to live in the Guest House. However, there was some audit and by virtue of the impugned order, the HRA was stopped and the recovery of the amount paid as HRA was ordered to be affected by the impugned order. The applicant opposed the recovery and made a representation but no effect and he was informed that because of the audit objection, the HRA could not be paid and recovery has to be made at the rate of Rs.2000 per month from his salary.

4. The contention of the applicant is that the Guest House room is not allotted to the applicant under the provisions of CRRI Residential Allotment Rules. The respondents also has no authority to recover the amount paid to him and the recovery is barred by the principles of estoppel. The respondents contested the application and filed the reply stating therein that no accommodation was available and a stop gap arrangement for a short period was made for the stay

of the applicant in the CRRI Guest House meant primarily for the use of the trainees. The stay could have continued for a short period or for a month as a special case. There was no contract between the CRRI and Dr. Ghosh to provide him accommodation on his joining. Subsequently, it came to the notice of CRRI that Dr. Ghosh instead of vacating the hostel after a month, continued to occupy the hostel by paying Rs.4 per day and also continued to claim Rs.600 per month as HRA. Soon thereafter, Dr. Ghosh was served with the order dated 1.9.1988 to vacate the hostel, so that audit objection may not be there in future. It is said that the government servants living in hostels are not entitled to HRA, that they are not charged market rent but only subsidised service charges. In this connection, the reliance has been placed on an extract from the Swamy's Compilation on HRA and CCA p.14 (Annexure R-II). The applicant was given opportunity and after that the order of recovery was passed. It is only after audit objection that recovery was ordered to be effected.

5. We have heard the parties at length and have gone through the records of the case. The respondents have filed the audit objection (Annexure R-IV) which goes to show that on occupation of government accommodation, the entitlement of HRA to the Government Servant ceases. The simple point in this case is that as per terms & conditions/ Dr. Ghosh is to be paid HRA or provided with a ^{Govt. family residential} accommodation. It is not disputed that he was not provided with/ such an accommodation. However, the Guest House cannot be said to be a Hostel accommodation. Dr. Ghosh cannot keep

his family in the Guest House and in Annexure A-IV representation by Dr. Ghosh, it has been clearly stated on 23.3.1990, that he has to share^{room}/accommodation with another guest trainee in the same room. Again it is also stated in that representation that once the younger brother of the applicant, Mr. Sandeep Kumar Ghosh, a school student, came with the applicant and stayed for a few days in the same room, he was not allowed to stay free in the Guest House and the Management had to be paid the prescribed Guest House charges as of a private guest.

6. The Guest House means a boarding place while hostel is a place where a person normally resides in his own right and a hostel accommodation is allotted while in a Guest House a person only stays for a short duration and can be asked to vacate the same after the limited period or prescribed period. If the respondents have allowed the applicant to stay for months then it is their fault and for that they can realise penal rent for over stay, if the Rules so prescribed, but the Guest House cannot be said to be a hostel so as to deprive the applicant of HRA, in as much as the applicant has not kept his family with him and even sometimes he has to share room accommodation with other trainees guest in the same room of the Guest House and also had to pay for stay of his own brother, a schoolian. In view of the above, the audit report in this case is not based on the proper appreciation of whether Guest House can be called a hostal accommodation and as such to withhold the HRA or recovering it shall be against law and principle of natural justice.

7. It is also contended by the applicant that the amount could not be recovered as the respondents are stopped by virtue of their own act as they have paid the HRA to him on his entitlement as per contract of fellowship. The applicant relied on AIR 1979 (SC) p.21 Moti Lal Padma Pat Sugar Mills Co. Ltd. Vs. The State of Utter Pradesh and others (also referred to in the application) where their Lordships observed as follows:

"Under our ~~juris~~prudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot by some undefined and undisclosed ground of necessity or expedience fail to carry out the promise made by it nor claim to be judge of its own obligation to the citizen on a ~~ex parte~~ appraisement of the circumstances in which the obligation has arisen."

8. We are of the opinion that the applicant is entitled to HRA in the absence of allotment of hostel accommodation or other Government accommodation, as he continued to live in a Guest House and could not keep his family with him, and also a direction is issued to the respondents not to recover the amount paid as HRA to the applicant and the applicant shall also be paid HRA as usual till he is provided hostel or other Government accommodation.

J. P. Sharma
(J.P. SHARMA) 22.11.90
MEMBER (J)

C. C. Jain
(P.C. JAIN) 22.11.90
MEMBER (A)