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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

Date of Decision: 03.08.92.

OA 2742/91

V.P. BHARGAVA

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant ... SHRI B.K. BATRA.

For the Respondents ... NONE.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporters or not ? *Yes*

JUDGEMENT (ORAL)

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

The applicant was Station Supdt. since retired on 31.5.89. He retired while serving in the same capesity at Delhi Cantt Railway Station. In this application, the applicant has challenged a pay order of Rs.2,103.50 dated 12.4.89 and he claims the reliefs that the respondents be directed to implement the orders passed by the Competant Authority for payment of dues relating to House Rent Allowance admissible under rules and refund of penal rent deducted illegally from the salary of the applicant; another direction to the respondents to arrange payment of balance amount amounting to Rs.16,796.50 as per details given in

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Annexure A-4 of the application. He has also claimed interest on this amount. As per Annexure A-4, attached to the application, the applicant has claimed from September, 1986 to April, 1989 i.e. for 32 months HRA @ Rs.450/- p.m. amounting to Rs.14,400/-. Penal rent deducted illegally from September, 1986 to January, 1988 i.e. for 15 months @ Rs.300/- amounting to Rs.4500/-. Thus, the total amount according to the applicant admissible is Rs.18,900/-. The applicant has been paid in January, 1990 by the order dated 14.12.89 a sum of Rs.2,103.50 thus he had claimed an amount of Rs.16,796.50.

The case of the applicant in short is that the post of Station Supdt. carries a quarter with post and when the applicant was transferred in August, 1986 to the Railway Station Delhi Cantt., the quarter attached to that post was not habitable or needed extensive repairs, as such the applicant continue to retain the quarter at the Sarai Rohilla Station, which was meant for the post of Station Supdt. By order dated 23/24.3.87, the Area Officer in the communication to Station Supdt. Sarai Rohilla with reference to the letter dated 17.3.87 of the Area Officer, Queens Road, Delhi, considered the matter and observed that Shri V.P. Bhargava (the applicant) may be allowed to continue in the same quarter or he may shift to another quarter in

Sarai Rohilla or may shift to another quarter in the same area of Traffic Pool. By another communication of 18.9.87 issued by Area Manager's Office it has been observed that the Station Supdt. Sarai Rohilla is without any railway quarter so it was decided that the railway quarter vacated by CMI, Sarai Rohilla may be temporarily allotted to Station Supdt., Sarai Rohilla, which he will vacate in case non pool quarter is vacated by Shri Bhargava.

The applicant is said to have made a representation on 26.6.90. No reply has been annexed of the said representation and it is stated that applicant has not received any reply.

None appeared on behalf of the respondents though one shri Sharad Trivedi appeared on 17.1.92. Shri Sharad Trivedi also appeared on 26.3.92 but no reply was filed. The same counsel appeared on 7.5.92 but no reply was filed. In view of this fact, on 1.7.92, the matter has been listed for final hearing for today.

The contention of the learned counsel is that in view of the S1.No.544 Circular No.34-E/0-III (E-4) dated 25.5.59, the question came for decision whether House Rent Allowance is admissible at the new station of the railway servant who on transfer has been permitted

to retain Govt. accommodation at the old station. It appears to have been decided that in such cases the railway servant concerned will be eligible for HRA in respect of the new station, if otherwise admissible, without regard to the fact whether he has been permitted to retain the Govt. quarter at the old station on payment of normal rent or penal rent. Thus, the case of the learned counsel as argued by him is that since the applicant was without a post quarter from September, 1986 till his retirement in May, 1989 then he should be given HRA at the admissible rate and also normal rent of the railway quarter in his occupation and use should have been charged from him. The respondents have not paid him HRA since September, 1986 to January, 1988. Thus, in short, it is claimed that the rent at the normal rate should have been recovered and HRA at the eligible rate should have been awarded - but the respondents have compensated him to the extant of only Rs.2,103.50 by the pay order of 14.12.89.

I have considered the Circular, cited before me as well as analysed the arguments on the ground of logic and reasonableness. What is claimed here, does not by itself go to show that a railway employee can get both the advantages i.e. an alternative accommodation in lieu of the post quarter as well as HRA which is

normally according to the Central Government Rules is paid to a Govt. servant when he either opts not to get a governemtn accommodation, pool or non-pool or is not allotted due to shortage of such accommodations. The learned counsel, therefore, then stated that atleast he is entitled to HRA for the period from 1986 to November, 1987. This circular also goes to show that in the case a Govt. servant is allowed to retain an accommodation at the old station then inspite of this he may be eligible for HRA without considering the fact whether he is being charged normal rent or penal rent. However, the learned counsel could not show that in such a situation the applicant should have been charged only normal rent. The circular does not give any better picture regarding this contention. The mention of the word 'penal rent' give a discretion to the administration that they have a right to realise or recover penal rent from such an incumbent who does not vacate or is not asked to vacate the quarter at the old station. Thus during the course of arguments, the learned counsel has also stated that the family of the applicant remained at Sarai Rohilla. For the conveniance of the family the applicant has to maintain two establishments and the applicant has remained at Delhi Cantt. in a rented accommodation. However, I do not find any document to support this fact, annexed to the application. When a fact is pleaded in the plaint/application it also be

substantiated if a document can be a proof of the same. Getting a rented accommodation elsewhere normally requires a payment to the owner against a receipt. In absence of such a document the inference to be drawn ultimately would be document has been withheld or is not available with such a person. This contention, therefore, remains unsubstantiated that the applicant has rented another accommodation in Delhi Cantt. Delhi Cantt. and Sarai Rohilla station are in Delhi and the applicant is a railway employee. This fact is to be considered to arrive at a reasonable decision.

However, in view of the circular for the period the applicant has paid the penal rent and was not provided an alternative accommodation, he is eligible for HRA at the then admissible rate i.e. from September, 1986 to November, 1987. It is made clear here that in absence of any reply from the respondents, the contention averred in the application and by the learned counsel during the arguments have to be accepted as these have not been rebutted.

The application is, therefore, disposed of in
the manner that the application is partly allowed to the
extent that the applicant shall be allowed only HRA for
the period from September, 1986 to November, 1987 and
the respondents shall be free to recover penal rent as

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has been done in this case. The balance of the amount, if still remains unpaid by the aforesaid payment order of 14.12.89 shall be made good to the applicant within a period of three months from the date of receipt of a copy of this order. In the circumstances, the applicant shall bear his own costs.

J. P. Sharma
(J.P. SHARMA)
MEMBER (J)
03.08.92