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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(12)

OA 1637/93

New Delhi, This the 16th day of September, 1994

Hon'ble Shri B.N. Dhoundiyal, Member(A)

Shri K.D. Jha,
S/o Late Sh. R.S. Jha,
R/o F-1, I.P. College Flats,
Sham Nath Marg,
Delhi - 110 054,
and retired as Director(Training),
Office of Chief Labour Commissioner,
Ministry of Labour,
Sharam Shakthi Bhawan,
New Delhi - 1.

.... Applicant

(By Advocate : Sh. Gyan Prakash and Sh. Inderjit Singh)

Versus

1. Union of India through,
Secretary,
Ministry of Labour,
Sharam Shakthi Bhawan, New Delhi - 1.
2. Chief Labour Commissioner(C),
Ministry of Labour,
Sharam Shakthi Bhawan,
New Delhi - 110 001.
3. Commandant,
505, Army Base Workshop,
Delhi Cantt.
4. Secretary,
Department of Expenditure,
Ministry of Finance,
North Block,
New Delhi.

.... Respondents

(By Advocate : Sh. Jog Singh on behalf of R-1&2)
Sh. M.K. Gupta for R-3)

ORDER

Shri B.N. Dhoundiyal

The applicant retired as Director(Training) in
the office of the Chief Labour Commissioner, Ministry of
Labour, Govt. of India on 31.8.1991. In the P.P.O. issued
on 24.7.1991 an amount of Rs.71,363/- was sanctioned as
retirement gratuity. The applicant is aggrieved that this

amount was not paid to him. He had also challenged letters issued by the respondents on 22.8.1991 and 8.9.1991, wherein it was held that the applicant was not entitled to draw H.R.A because his wife was allotted a house by the I.P. College and the rent charged by that college was subsidised. He has sought a direction from this Tribunal for payment of the gratuity amount already sanctioned to him with interest at the market rate for the delay in payment and quashing of the impugned letter dated 8.9.1992 regarding non-admissibility of H.R.A. to the applicant.

2. In the counter filed by the respondents, the main averments are that during his posting in Delhi, Sh. Jha has been drawing H.R.A. as admissible to the officers of his status. However, in the course of scrutiny of telephone bills of Sh. K.D. Jha by the Pay and Accounts Officer, Office of the Chief Labour Commissioner(Central), New Delhi, it was observed that Sh. K.D. Jha was drawing H.R.A. at the rate applicable to him while residing in an accommodation allotted by I.P. College, Delhi to his wife. In a note dated 22.8.1991 the audit authorities requested that the over payment of H.R.A. made to Sh. Jha be worked out and intimated for recovery from his retirement gratuity. The representations submitted by Sh. Jha were examined in consultation with the Ministry of Finance and the undisputed amount of gratuity amount of Rs. 22,847/- has been released in September, 1993 after adjusting

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the inadmissible amount of H.R.A. drawn by him. The applicant have drawn H.R.A. amounting to Rs.49,316/- during the period January, 1978 to 31st August, 1991. This H.R.A. drawn by him was not admissible in terms of para 5(c)(iii) of Ministry of Finance's O.M. dated 27.11.1965 (Annexure R-2).

3. I have heard the learned counsel for the parties and perused the records. Para 5(c)(iii) of the Ministry of Finance, O.M. dated 27.11.1965 reads as under:-

"A Government servant shall not be entitled to house rent allowance if his wife/her husband has been allotted accommodation at the same station by the Central Government, State Government, an autonomous public undertaking or semi-Government organisation such as Municipality, Port Trust, etc., whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her."

The contention of the respondents is that the I.P. College can not be deemed to be a purely private organisation and the rent fixed by them is quite subsidised and does not represent market rent. In fact, rent in this college is charged according to UGC guidelines. The staff quarters allotted to the staff do not belong to the trust, they are constructed out of loan from the Government of India upto 50% of the loan. The rent chargeable is only 10% of pay which is as subsidised as the licence fee in case of Central Govt. accommodation. Moreover, I.P. College is receiving 95% of the grant from the UGC and is functioning according to UGC and Delhi University norms. Delhi University follows

Govt. of India orders on all allowances, namely,
DA, Bonus, Interim Relief, CCA, etc. The Indra Prastha
Education Trust XX responsible for the management of
I.P. College was registered under the Societies
Registration Act of 1960 on 30.1.1953 in the Office
of the Registrar of Joint Stock Company, Delhi.
The Board of Trustee consists mainly of businessmen.
The counsel for the applicant has drawn our attention
to a letter dated 16th January, 1979, wherein it is
confirmed that no grant from UGC has been utilised
for the staff quarters and Mrs. Jha is paying licence
fee @ 25% of her salary per month and receives H.R.A.
as per rules and that the said college is affiliated
to the Delhi University. Another certificate issued
by the Principal of that college on 26th August, 1991
avers that the staff quarter of that college are not
owned by Govt. semi-Govt, Municipal Corporation or
Autonomous Public Sector Undertaking. I, therefore,
hold that the case of the applicant was not covered
by the restrictions placed on drawal of H.R.A. in
terms of the O.M. referred to above. The assumptions
made by the respondents are that the staff quarters
have been constructed by taking loan or that only 10%

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of the salary is deducted as house rent on a subsidised basis are belied by this clarification given by the college authorities.

4. Another contention of the respondents is that the applicant did not furnish certificate as required under para 8(a) of the Ministry of Finance O.M. dated 27.11.1965. As early as 26th July, 1978 the applicant applied to the Commandant, Delhi Cantt. that he was staying in the accommodation allotted to his wife by the college and that he was entitled to H.R.A. at the minimum rate. This request was examined in consultation with DCDA, Delhi Cantt./CDA, Meerut after vetting by the ^{audit} authority and he was allowed arrears of H.R.A. in terms of letter dated 14th October, 1991 issued by the Accounts Officer of 505, Army Base Barracks. In a letter dated 9.1.1979 addressed to the CDA, Meerut by DCDA, Delhi Cantt., it has also been confirmed that a categorical statement has been made that he was incurring some expenditure towards rent (Annexure S-5). This the fact clearly shows that he was sharing the accommodation allotted to his wife by the I.P. College had been brought to the notice of the competent authorities who had examined the case and allowed him accumulated arrears

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of H.R.A. in 1991. The reason given in the impugned order dated 8.9.1992 is as under:-

"It has been held that you were not entitled to draw H.R.A. because the rent charged by I.P. College is subsidised and fixed on the directives/guidelines of University Grants Commission which is a Govt. agency. The accommodation of I.P. College can not be treated as property of a private organisation".

5. (i) The XXXXXXXX clarification given by the college authorities that 25% of the pay is charged as rent which can on no account be taken as subsidised rent. By no stretch of imagination, a private college run by a Society Registration Act of 1960 with Board of Trustees being non Govt. officials can be treated as a semi-Govt. body just because it receives grants, loans and is affiliated to Delhi University.

5. The application is therefore allowed with following directions:-

- (i) The impugned order dated 8.9.1992 is hereby quashed and set aside. The applicant shall be entitled to draw H.R.A. and no recovery shall be made from his DCRG on this account.
- (ii) The balance of DCRG which has been withheld by the respondents shall be released to him with 12% interest which will be payable on the total amount of DCRG drawn on 31.11.1991, i.e. three months after his retirement on the amount

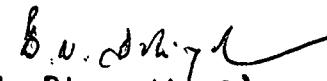
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of Rs.22,047/- released to him on 10.9.1993 till

that date and on the remaining amount till the date
of actual payment.

(iii) These orders shall be implemented within a period
of four months from the date of receipt of a
certified copy of this judgement. There shall be
no orders as to costs.


(B.N. Dhoundiyal)
Member(A)

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