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Central Administrative Tribunal
Principal Bench, New Delhi.

O.A. No.487 of 1993

18th day of February, 1994.

Shri N.V. Krishnan, Vice-Chairman(A)

1. Central P.W.D.Mazdoor Union,
Ghaziabad through
its Secretary
Shri Raj Bahadur.
2. Shri Dhanpal Sharma,
Assistant Operator
3. Shri Dharampal,
Mazon.
4. Shri Bhoop Singh,
Beldar.
5. Shri Prem Shankar,
Wireman.
6. Shri Satya Prakash,
Wireman.
7. Shri Shkyam Singh,
Beldar.

(All working under CPWD, Ghaziabad)
By Advocate Shri B.S. Mainee.

Applicants

Versus

Union of India through

1. The Secretary,
Ministry of Urban Development,
Nirman Bhavan,
New Delhi.
2. The Secretary,
Ministry of Finance,
North Block,
New Delhi.
3. The Director General of Works,
C.P.W.D., Nirman Bhavan,
New Delhi.
4. The Executive Engineer (Civil & Elect.),
C.P.W.D., Ghaziabad Central Division,
Ghaziabad (U.P.)

Respondents

By Advocate Shri K.C. Mittal.

O R D E R

Shri N.V. Krishnan, Vice-Chairman

The first applicant is the C.P.W.D. Mazdoor Union, Ghaziabad, through its Secretary, Shri Raj Bahadur and applicants No.2-7 are all employed under the 4th respondent, the Executive Engineer (Civil & Elec.), C.P.W.D., Ghaziabad. The applicants are aggrieved by the directions contained in the Office Memorandum No.G.11013/2/01-Coord. dated 26.11.1991 (Annex. A-1) of the Ministry of Urban Development, the first respondent clarifying that H.R.A. at the rates applicable to Delhi will be available only to Central Govt. employees whose place of duty falls within the municipal limits of Ghaziabad, and that it will not be applicable to employees whose place of duty falls outside the municipal limits of Ghaziabad, but within the Urban Agglomeration (U.A.) of Ghaziabad. It was also clarified that if such payments are made, they are in contravention of the orders dated 26.5.1975. In pursuance of this, recoveries were apparently started and the 4th respondent sent a proposal on 1.12.1992 (Annex. A-2) to the superior authorities that the recovery should be made in 50 equal instalments as the amount of recovery is very big.

2. It is the contention of the applicants that they are entitled to receive the H.R.A. at Delhi rates and the recovery ordered is illegal.

3. The brief facts giving rise to the issue of the Annex. A-1 directions are as follows:

3.1 Admittedly, to ease congestion in Delhi, a number of offices were shifted to places outside Delhi and some were shifted to Ghaziabad. In this context, certain orders were also issued about the entitlement of the employees to House Rent Allowance (H.R.A.) and City Compensatory Allowance by the order dated 26.5.1979 (Annex. A-4) the relevant extracts of which are reproduced below:-

"The undersigned is directed to say that the President is pleased to decide, as a special case, and in partial modification of the provisions of this Ministry's O.M. No.F2(55)-E.II(E)/73 dated 6.6.74, that Central Government employees whose place of duty is within the Ghaziabad Municipality shall be paid house rent allowance and compensatory (city) allowance at the rates applicable to Delhi. The rates of the allowances and the terms and conditions of their admissibility will be governed by this Ministry's O.M. No.F.2(55)-E.II(B)/73 dated 6.6.74 read with their O.M. No.2(37)-E.II(B)/64 date 27.11.65 as amended from time to time.

2. These orders take effect from the date of issue."

In pursuance of this order, the applicants and the other similar employees were being paid to H.R.A. at Delhi rates.

3.2 When this came to the notice of Government, the impugned Annex. A-1 O.M. was issued clarifying the scope of H.R.A. to the employees. The clarification meant that in respect of Central Govt. employees whose place of work is outside the Ghaziabad munitipality, but is within the Ghaziabad U.A., the H.R.A. will not be paid at Delhi rates, as authorised by the Annex. A-4 Memorandum, but will be paid at the ordinary rates admissible to Ghaziabad town.

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3.3 As this meant that overpayments had been paid to the Government employees, recovery proceedings were started, as would be clear from the impugned Annex. A-2 order.

3.4 The applicants contend that they are entitled to the Delhi rates of H.R.A. for the following reasons:-

- (a) The office of the C.P.W.D., Ghaziabad is situated in the C.G.O. Complex, Ghaziabad, where other Govt. of India offices are also located and this C.G.O. Complex is situated on the bank of the road just outside the limits of the Ghaziabad Municipality. A map of the relevant places has been filed at Annex. A-3.
- (b) In a similar case, the Central Govt. employees in the C.G.O. Complex at Faridabad, which is also located outside the municipal limits of Faridabad, are being paid H.R.A. at Delhi rates. Likewise, the C.P.W.D. staff working at Hindon Airfield and the staff of Kendriya Vidyalaya, Hindon, are also being paid H.R.A. at Delhi rates though Hindon is 10 metres outside the municipal limits of Ghaziabad.
- (c) No opportunity was given to the applicants of representing their case before impugned order was passed.

3.5 Hence, the respondents have prayed for a direction to quash the impugned Annex. A-2 orders and to further direct the respondents to continue to pay HRA at Delhi rates.

4. The respondents filed the reply stating that there is no order of Government which says that Central Govt. employees who have their place of duty outside the Municipal limits of Ghaziabad, will be paid H.R.A. at Delhi rates. Such a conclusion cannot be drawn from the Annex. A-4 Office Memorandum dated 26.5.1979. In fact, that memorandum which has been reproduced in para.3.1 above, specifically refers to Central Govt.. employees whose place of duty is within the Ghaziabad Municipality. Insofar as the payment of H.R.A. at Delhi rates to the Govt. employees working in C.G.O. Complex outside the Faridabad Municipality limits and to the staff at Hindon, which is also outside the municipal limits of Ghaziabad, no justification has been given except to say that this has been done by issuing separate orders.

5. I have heard the learned counsel for the parties. The learned counsel for the applicant submitted that in a similar matter, a decision has already been rendered by this Tribunal in ATJ 1993(1) 1. He also contended that in terms of the Ministry of Finance O.M. No.11021/6/76-E.II(B) dated 26.10.1977 reproduced in Annex. A-9, H.R.A. will be payable to the Central Govt. employees within the area of U.A. of the qualified city at the same rate as is applicable to the classified/qualified city. He, therefore, contends that the same rate that is given to the Central Govt. employees who have their place of duty in Ghaziabad Municipality, should be paid to the applicants also whose places of duty are in the Ghaziabad U.A. outside the Municipal limits.

6. The learned counsel for the respondent, however, contended that as the Annex. A-4 orders are very clear on the point, the applicants are not entitled to any relief as, admittedly, their offices are outside the Municipal limits of Ghaziabad and hence, Delhi's H.R.A. cannot be applied to them.

7. I have carefully considered the rival contentions. It appears to me that the learned counsel for the applicant has a strong case based on the Ministry of Finance O.M. dated 26.10.1977. These orders are available in Swamy's compilation of FR&SR, Part 5, HRA and CCA and the Annex. A-9 in the O.A. is a copy from Swamy's compilation from an earlier edition. At page 11 of this compilation, the power is delegated to administrative ministries/departments for continued grant of H.R.A./C.C.A. A clarification too is given by the Ministry of Finance O.M. No.11021/6/67-E.II(B), dated the 26th October, 1977 which reads as follows:-

"Clarification 2. - It has been decided in consultation with the Staff Side of the National Council ((JCM) that House Rent Allowance will also now be payable to the Central Government employees within the area of the Urban Agglomeration of classified city at the rates admissible in the classified city. The existing provisions for the payment of House Rent Allowance under paras.3 (b)(iii) of the Office Memorandum, dated 27.11.65, will, however, continue to be applicable only at places which are within 8 kilometres of municipal limits of classified cities, but which are not included within Urban Agglomeration of any city, subject to fulfilment of usual conditions laid down and subject to issue of specific sanctions therefor as before."

It is seen that Rule 3-A(i) of the H.R.A. Rules describes the areas where H.R.A. is admissible in the following

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terms:-

"The limits of the locality within which these orders apply, shall be those of the names municipality or corporation", etc.

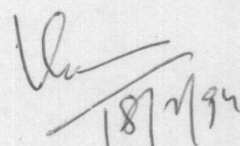
Thus, initially, H.R.A. was available only to a Municipal town. By the addition of clarification, ^{-2 above} it was extended to the U.A. associated with the municipality. It also said that in the areas of the U.A. outside the classified city, i.e., a municipality, the rates of H.R.A. will be the same as in the classified city.

8. Admittedly, the office of the applicants is located in the U.A. of Ghaziabad. The constituents of the Ghaziabad U.A. are also given at page 178 of Swamy's compilation. The principal constituent is Ghaziabad which is the Municipal Board and to this has been added Razapur (Kamla Nehru and Shastri Nagar) which are out-growths of the Municipal Board. The other constituent is Ghaziabad Railway Colony which is a census town outside the Municipal Board. From the description given in the Annex. A-3 map, it is clear that the office of the applicants falls in the Razapur (Kamla Nehru and Shastri Nagar) Municipal out-growths. They are, therefore, entitled to receive H.R.A. at the same rate as is applicable to the Govt. employees in Ghaziabad Municipality in terms of the above clarification. The rate applicable to Ghaziabad Municipality, has been notified by Govt. by the Annex. A-4 memoranda, which is the Delhi rate. Therefore, automatically, the same rate would also apply to the Govt. employees whose place of duty is outside the

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Ghaziabad Municipality but within the Ghaziabad U.A. In other words, the applicants' claim had to be fully allowed in terms of Annex. A-4 O.M. dated 26.5.1979 read with clarification 2 of the Ministry of Finance O.M. dated 26.10.1977, quoted above.

9. In the circumstances, I allow the O.A. and quash the Annex. A-1 Memorandum as well as the Annex. A-2 proceedings regarding recoveries and declare that the applicants are entitled to H.R.A. at Delhi rates in respect of their working in the offices located in any place in Ghaziabad U.A. which may be outside the Municipal limits in terms of the Annex. A-4 O.M. dated 26.5.1979, read with the Ministry of Finance O.M. dated 26.10.1977. No costs.


18/1/94

(N.V. Krishnan)
Vice-Chairman(A)

SLP