



**Central Administrative Tribunal
Principal Bench, New Delhi**

**O.A. No.862/2019
M.A. No. 1795/2021**

**Reserved on: 29.07.2021
Pronounced on: 03.09.2021**

(Through Video Conferencing)

Hon'ble Mr. Mohd. Jamshed, Member (A)

Shri Jayabrata Bose (Aged 58 years), Group A,
S/o Shri S. K. Bose,
Adviser, O/o CAC,
Department of Expenditure,
R/o 8/12 KAD, Shipra Sun City,
Indirapuram, Ghaziabad,
U.P. 201014.

...Applicant

(By Advocate: Mr. Ajai Kr. Srivastava)

Versus

1. Union of India,
Through the Secretary,
D/o Expenditure,
North Block, New Delhi.

2. Chief Adviser,
O/o Chief Adviser Cost,
D/o Expenditure,
2nd Floor, 'C' Wing,
Lok Nayak Bhawan,
Khan Market, New Delhi.

...Respondents

(By Advocate: Mr. Gyanendra Singh)



ORDER

Mohd. Jamshed, Member (A):

The applicant belongs to Indian Costs and Accounts Service. He was posted in Department of Expenditure, Ministry of Finance since 2003 and was staying with his wife, who is an employee of Indira Gandhi National Open University (IGNOU) in the officially allotted accommodation to her in the IGNOU campus at Maidan Garhi, New Delhi since July, 2003. It is stated that the applicant shifted to his own flat located at Indirapuram, Ghaziabad w.e.f. May, 2007 in view of personal reasons and exigencies of work. On 15.05.2007, the applicant also informed his establishment that in view of various work related and logistical issues, he would be staying in his own flat at Indirapuram, Ghaziabad and not with his wife, who is allotted Government accommodation at IGNOU Campus and, therefore, he should be granted House Rent Allowance (HRA).

2. S sometime in 2016, when the applicant was posted in Delhi Milk Scheme (DMS) under the Department of Animal Husbandry, Dairying & Fisheries (DoAHD&F), a complaint was made against him for wrongful drawl of HRA, in view of the fact that his spouse was in possession of Government accommodation allotted by



IGNOU. The Department of Expenditure vide order dated 15.09.2016 advised that as both the applicant and his wife being posted in Delhi and one of them having been allotted Government accommodation, the HRA to the applicant becomes inadmissible. Subsequently, the Chief Adviser Cost (CAC) vide order dated 03.04.2017 communicated the decision of Department of Expenditure with regard to initiation of recovery of excess HRA paid to him for the period from May, 2007 to March, 2017.

3. The applicant submitted his representation dated 11.04.2017 against the proposed recovery of excess amount of HRA of Rs. 13,76,697/-. The applicant contends that since he was not staying in the Government accommodation allotted to his wife since 2007, he is rightfully entitled for HRA and the impugned order for recovery of excess HRA from May, 2007 to March, 2017 is illegal and not as per rules. By filing the present OA, he is seeking quashing and setting aside of the impugned order and to direct the respondents to pay HRA to the applicant which was withheld. As an interim relief, he also prayed for staying the operation of the impugned order dated 14.02.2019. The Tribunal vide order dated 25.03.2019 stayed the proposed recovery in



terms of the impugned order dated 14.02.2019. Thereafter CP No. 54/2021 was filed by the applicant indicating that he has retired from service w.e.f. 31.01.2021 and the respondents have withheld Rs. 13,76,697/- towards excess HRA from his gratuity and only the balance amount i.e. Rs. 6,23,303/- has been released and this being in violation of the Tribunal's interim order calls for contempt. No reply was filed by the respondents in the CP and further time was sought. In the meanwhile, the OA has been heard today.

4. The applicant has also relied upon the judgment of Mumbai Bench of this Tribunal in OA No. 822/1991 decided on 26.10.1994 and OA No. 311/2010 decided on 28.10.2010 and the judgment of Hon'ble High Court of Karnataka in W.P. (C) No. 17925/2003 (S-CAT) decided on 08.10.2010. He has also relied upon the judgment of Hon'ble Apex Court in ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer) in CA No. 11527 of 2014*** (***Arising out of SLP (C) No. 11684 of 2012*** decided on 18.12.2014 in connection with the issue of recovery of excess amount and the judgment of Hon'ble Delhi High Court in LPA No. 246/2018 & C.M. No. 18028/2018 also dealing with the issue of recovery of excess payment.



5. Respondents filed a counter affidavit opposing the OA. It is submitted that the applicant since his posting in Delhi in 2003 has been staying with his wife who is provided Government accommodation in IGNOU Campus, Maidan Garhi, Delhi. In 2007, he made a representation that he would be staying in his own flat in Indirapuram, Ghaziabad and claimed HRA. On the basis of this declaration, HRA was provided to him from May, 2007 to March, 2017. Through a complaint, the payment of wrongful excess HRA claimed by the applicant for the period May, 2007 to March, 2017 was discovered and Rs. 13,76,697/- was ordered to be recovered. The applicant made a representation and the same was examined by Department of Expenditure. His request was not acceded to and the applicant was directed to return the excess amount of HRA to Government Treasury vide order dated 14.02.2019.

6. It is evident that the order of recovery of excess HRA paid to the applicant was much before his retirement. The applicant filed this OA and during the pendency of the present OA, the applicant retired on 31.01.2021. The respondents contend that the applicant's wife was working in IGNOU which is a Central Government autonomous body under the administrative control of



Ministry of Human Resource Development and it is funded through budgetary support and thus it is covered in Para (5) (iii) of conditions for drawl of HRA. It is also submitted that the applicant continued to stay in the Government accommodation provided to his wife from 2003-2007 and did not claim HRA. After May, 2007 he advised the department that for personal and logistical reasons he would be staying in his own flat in Indirapuram, Ghaziabad and he should be paid HRA and on the basis of his claim, he was paid HRA from May, 2007 to March, 2017. It is also contended that the overpayment made to him was on account of his own submission and claim for HRA and, therefore, for this wrongful claim, being a Group - 'A' Government Officer, he is squarely responsible and the department has decided to recover the excess amount of HRA paid to him from May, 2007 to March, 2017. The OM of DoP&T dated 02.03.2016 has taken note of the judgment passed by the Hon'ble Apex court including **Rafiq Masih's** case (Supra) and others and provided detailed guidelines of how these cases are to be decided. It is also indicated that wherever waiver of recovery in the various situations is considered, the same may be allowed after approval of Department of Expenditure. In this case the



representation of the applicant was considered by the Department of Expenditure and was rejected. It was also submitted that there is no contempt of the interim order passed by this Tribunal as no recoveries have been made and the amount of gratuity has been withheld.

7. Heard Mr. Ajai Kr. Srivastava, learned counsel for the applicant and Mr. Gyanendra Singh, learned counsel for the respondents, through video conferencing.

8. The applicant is a Group – 'A' Gazetted Officer of Indian Costs and Accounts Service posted in Delhi since 2003. The applicant's wife is also employed with IGNOU which is a Central Government Autonomous Body under the administrative control of Ministry of Human Resources Development and is funded through budgetary support. Under the Central Government Autonomous Body, it is covered under Para (5) (iii) of conditions for drawl of HRA. The applicant stayed with his wife in Government accommodation provided to her in IGNOU Campus in Delhi from the year 2003 to 2007. It is stated by the applicant that he for his own personal and logistical reasons shifted to his own flat in Indirapuram, Ghaziabad w.e.f. 2007 and advised the department that in view of the same, he shall be provided the HRA. On the



basis of his request and claim, he was provided HRA from 2007 to 2017. Subsequently, in the year 2016 when he was posted in DMS, a complaint was made against the applicant for excess drawl of HRA as his spouse was in possession of residential accommodation allotted to her by IGNOU. Vigilance wing which looked into the complaint sought certain clarification from the applicant in this regard and recommended that necessary action for recovery of excess HRA should be taken. The Director, O/o Chief Adviser Cost, Department of Expenditure vide his OM dated 03.04.2017 directed that HRA will be not allowed to the applicant from the month of April 2017 onwards and further necessary action will be initiated against the applicant for drawing excess HRA from May, 2007 to March, 2017. The applicant submitted his representation to the OM dated 03.04.2017. The respondents vide OM/impugned order dated 14.02.2019 stated that his representation was submitted to the Department of Expenditure and the Competent Authority in Department of Expenditure has not acceded to his request for waiver of excess HRA and, therefore, he is directed to return the excess HRA drawn by him.

9. The applicant, aggrieved by this decision filed the OA seeking interim relief for stopping of the proposed



recovery. The Tribunal stayed the operation of the impugned order dated 14.02.2019. During the pendency of the OA, the applicant retired w.e.f. 31.01.2021 on superannuation. In terms of the interim relief granted by the Tribunal although no recovery has been made but the due amount of excess HRA of Rs. 13,76,697/- has been withheld from the gratuity due to him and only the balance amount of Rs. 6,23,303/- has been paid. The main contention of the applicant has been that the residential accommodation provided to his spouse in IGNOU Campus cannot be considered as Government accommodation as the Universities cannot be considered as Government Department or Government bodies. In support of his claim, he has relied upon the aforesaid judgments of the Hon'ble Karnataka High Court and this Tribunal. The fact, however, remains that IGNOU is an autonomous body under the Central Government, Ministry of Human Resource Development and is fully funded by budgetary support. It is also a fact that this aspect has also been clarified in OM dated 03.04.2017 by Department of Expenditure {E.II (B) Division} vide ID No. 2/2/2016-E.II (B) dated 15.09.2016 as under:-

“It is clarified that as both the officer & his wife are posted at Delhi (UA) and his wife has been allotted residential accommodation at the same station by IGNOU, which is an Autonomous Body under the



administrative control of Ministry of Human Resource Development and is funded by the Central Government, it would imply that accommodation provided to spouse of Director (Cost) would qualify as 'Government Accommodation' for the purpose of 5(c)(iii) notwithstanding the judgments of CAT, Mumbai Bench quoted in the reply dated 07.03.2016/30.03.2016 furnished by the officer in response to the clarification sought by DMS/DoAHD&F, since the same were applicable to only the applicants in those OAs. Therefore, HRA to the officer becomes inadmissible from the date his spouse has been provided accommodation by IGNOU, even though the officer may desire to live separately at Ghaziabad"

10. With this clarification the claim of the applicant that the rules of Central Government accommodation are not applicable to the accommodation provided by IGNOU is not tenable. At the same time, it is also a fact that the applicant was aware that he was staying with his wife who was allotted Government accommodation since 2003. If it is his contention that the accommodation provided by IGNOU is not at par with the Central Government accommodation, then he should have claimed HRA even for the period from 2003 to 2007. The very fact that he did not claim the HRA during this period clearly shows that he was well aware that by staying in accommodation provided to his wife, he is not entitled for HRA. Therefore, as per his own submission by shifting out from Government accommodation allotted to his wife at IGNOU Campus and to stay in his own flat at Indirapuram, Ghaziabad, he cannot claim HRA as both the husband and wife are posted in Delhi and



Government accommodation having been allotted to one of them, the same does not entitle the other one to claim the same. The contention that this excess payment of HRA has been made by the Government on its own accord and, therefore, he is not responsible for the excess payment made to him cannot be sustained as he has himself in the year 2007 advised the department that for logistical and personal reasons he will be staying in his own flat and, therefore, he should be given HRA from 2007. This claim of the applicant is, therefore, self contradictory to each other. It is also not his case that since he has retired, therefore, no recoveries should be made for the excess payment. This was clearly stated to him vide OM dated 03.04.2017, much before his retirement to which he has also made representation to the Competent Authority. The same was rejected vide OM/impugned order dated 14.02.2019. It is also a fact that as far as the judgment of Hon'ble Apex Court in **Rafiq Masih's** case (Supra) is concerned, the same has been dealt with in DoP&T OM dated 02.03.2016 and guidelines have been provided for processing such cases. It is clearly stated that these cases should also be referred to Department of Expenditure. In the applicant's case his representation has been considered by the



Department of Expenditure and rejected. It is thus evident that the applicant has knowingly claimed inadmissible HRA for the period May, 2007 to March, 2017. This excess payment has been worked out and is to be recovered from the applicant in terms of OM dated 03.04.2017 and impugned order dated 14.02.2019. The applicant being a Senior Group – 'A' Officer was expected to follow the extant rules and regulations and be aware of the wilful inadmissible claim of HRA.

11. In view of the above, I do not find any infirmity or illegality in the impugned orders dated 03.04.2017 and 14.02.2019 passed by the respondents towards recovery of excess payment of HRA. The OA is, accordingly, dismissed. The interim relief granted vide order dated 25.03.2019 also stands vacated. Pending MA also stands disposed of. There shall be no order as to costs.

**(Mohd. Jamshed)
Member (A)**

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