

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

O.A./351/885/AN/2021

M.A./351/311/AN/2021

Date of order : 25.06.2021



os.
of
ses
sto
:d
(cl.
A)

**Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member**

NON GAZETTED GOVT. OFFICERS'ASSOCIATION AND OTHERS

VS.

**THE UNION OF INDIA & OTHERS
[A&N Administration(Education)]**

For the applicants : Mr. G.B. Kumar, Counsel

**For the respondents : Mr. K. Rao, counsel
Mr. R. Halder, counsel**

ORDER

Bidisha Banerjee, Judicial Member

The Hon'ble Lieutenant Governor, A&N Islands vide a circular dated 09.05.2007 introduced guidelines revising the tenure of posting of Group C and D employees in Tsunami affected areas from exiting 6 months to one year with a rider that :-

"Keeping in view the welfare of employees posted in these places. Hon'ble Lt. Governor has been pleased to order payment of HRA at usual rate admissible, as a special case, to the employees posted in Southern Group of Islands/Little Andaman and also exempt them from payment of License, if any, for the shared accommodation being provided to them, until permanent(not legible) residential

accommodation as per their entitlement are allotted to the(not legible) posted in these places."

In terms of the said rider, the members of the applicants' Association have been allowed to draw HRA for years together. They drew HRA induced by the belief that such HRA was admissible to them as they were sharing accommodation. They were surprised to find withdrawal of para 3 of the circular dated 09.05.2007 (the rider supra), vide Admn. Circular dated 15.07.2020, due to an Audit objection and "to drop Audit para" and to treat the circular dated 09.05.2007 as non est. They were even more surprised to find a circular dated 26.02.2021 which was fielded proposing recovery to the tune of Rs.1.42 crores from 296 employees of A&N Administration, on the ground that they have drawn inadmissible payment of HRA. Aggrieved, the Association has come up on behalf of its members to seek stay of impugned circular dated 26.02.2021 pending final adjudication on the legality and propriety of retrospective withdrawal of para 3 of circular dated 09.05.2007.

2. At hearing, Mr. G.B. Kumar, Ld. Counsel for the applicants would place the decision of Hon'ble Supreme Court in **Syed Abdul Quadir & Others Vs. State of Bihar & Others [(2009)3 SCC 475]** para 27 whereof reads as under:-

27. *This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of*

rule/order, which is subsequently found to be erroneous. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana, 1995 Supp. (1) SCC 18, Shyam Babu Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M. Bhaskar, [1996] 4 SCC 416; V. Ganga Ram vs. Regional Jt., Director, [1997] 6 SCC 139; Col. B.J. Akkara [Retd.] vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors., vs. State of Bihar, [2006] 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr., [2006] 8 SCC 647; and Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr., [2000] 10 SCC 99.

Placing the above, Id. counsel would submit that the members of the Association had drawn HRA since 2007 and there was no fraud or misrepresentation on their part.

3. Id. Counsel for the respondents would vociferously object to maintainability of the OA, preferred by the Association on behalf of its members.

4. We have heard Id. Counsels for both the parties. We are *prima facie* of the opinion that an OA by an Association is maintainable.

5. So far, it is no one's case that the members of applicants' Association have been wrongly allowed to reap benefits of para 3 (the rider supra), rather the respondents to attenuate the effect of the rider in the circular dated 09.05.2007 have issued a circular dated 15.07.2021, and to retrospectively nullify the effect of para 3 (the rider supra) of the circular dated 09.05.2007

issued the present impugned circular dated 26.02.2021 to unilaterally take away the benefits that such employees have drawn without any fraud or misrepresentation on their part. No opportunity, as legally available to such employees, have been provided. We have also perused the decision of the Hon'ble High Court that was placed before us.

6. As the balance of convenience is heavily tilted in favour of such employees, we stay the effect of Circular dated 26.02.2021. Let there be no recovery until next date of hearing. Respondents to seek instructions. List on 25.06.2021 for further orders.

7. Plain copy of this order be given to both sides for communication and compliance.

(Dr. N. Chatterjee)
Administrative Member
sb

(Bidisha Banerjee)
Judicial Member

(a) Sl. No. of the appn.
 (b) Name of the applicant.....
 (c) Dt. of presentation or application for copy.....
 (d) No. of copies.....
 (e) Copying fee charges/ charges of photocopy.....
 (f) Dt. of preparation of copy, 25/6/21
 (g) Dt. of delivery of the copy
 (h) Date and signature