

OPEN COURT
CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

DATED THE 13th APRIL, 1998

66RAM : HON'BLE MR. S.DAYAL, A.M.

ORIGINAL APPLICATION NO. 232 OF 1995

1. B.K.Shukla S/o late Sri B.N.Shukla,
resident of 285, Railbazar, Kanpur Nagar.
2. Ganga Prasad S/o late Shri Jagannath Prasad,
resident of 18/219, Kuruswa, Kanpur Nagar.

C/R Shri K.K.Tripathi ... Applicants

Versus

1. The Union of India, through Ministry of Defence, (D.G.O.A.) Senior Quality Assurance, E.S.T.I.(G.S.), D.G.O.A.Complex, L.B.S.Marg, Vikrauli, Bombay - 400083.
2. The Chairman, Ordnance Factory, Board Aukland House, Calcutta.
3. The General Manager, Ordnance Factory, Bhusawal.
4. The Senior Quality Assurance Officer, S.O.A.E.(G.S.) Cl. Kanpur.
5. The Controller of Defence Account, Central Commandant, Lucknow.
6. Controllerate Quality Assurance, G.S. Kanpur.

Respondents

C/R Shri Ashok Mohiley, Advocate

ORDER

BY HON'BLE MR. S. DAYAL, A.M.

This is an application under section 19 of the Administrative Tribunals Act 1985.

2. The applicant, have come to the Tribunal against orders dated 13.7.90 and 16.11.94 which are for recovery of House Rent Allowance drawn by the two applicants in this case while they were in occupation of Government accommodation and another order in which the amount of recovery has been mentioned as payable by the two applicants

3. The facts/narrated by the applicants are that the applicants were transferred from Kanpur to Bombay with posting at G.S.Q.A., Ordnance Factory, Bhusawal with effect from 14.3.88 to 15.4.90 and 21.9.87 to 30.4.90 respectively. They stayed in one room of N.G.O. Mess, Quarter No.T-64/1 at (Clerical line) @ Rs.2/- per day per bed. The applicants paid the amount for occupancy of bed in N.G.O. Mess and were paid house rent allowance by the G.S.Q.A., Ordnance Factory at Bhusawal. Although both were transferred in April 1990 to Kanpur, they were sent ^{on the basis of} notice for the recovery of H.R.A. by Circular dated 7.10.94. Curiously the applicants ^{themselves have} mentioned that they received a copy of order dated 13.7.90 regarding recovery of H.R.A. from the applicants. They ~~claimed~~ and represented against the order by letter dated 15.11.90 and claimed that no action was taken till October 1994. By order dated 16.11.94 they were asked to pay back Rs.5,524/- and Rs.6,820/- respectively from their pay. They claimed to have made a representation against this order. They claimed in their representation that circular which is sought to be applied to them disentitling ^{them} to receive the H.R.A. was ~~not~~ issued

after they had moved from Bombay to Kanpur and was not applicable to their cases as it was not given any retrospective application. They claimed that they received the H.R.A. because they had not been given house facilities and were permitted to live temporary in the N.G.O Mess having only one bed in a room. They claimed that their representation did not bring about any responsibility but at the same time no money has been recovered from the applicants so far. They mentioned the names of few other employees who have ^{been residential} given facility in the N.G.O. Mess but ^{although} no recovery has been made from them, they also received H.R.A. The names of such persons stated by the applicants are Shri Kumaran, Shri Yadri, Shri Veshnava and Shri Tongarrey as well as Mr. Soni. The first four belong to Central Schools establishment.

4. The learned counsel for the applicant remained absent inspite of the ~~given~~ order in the order sheet that he would be given last chance of hearing on 13.4.98. Shri Ashok Mohiley appeared for the respondents and presented arguments on their behalf. The pleadings on record have been examined. Shri K.K.Tripathi appeared subsequently and was heard as far as his arguments are concerned.

5. The learned counsel for the respondents drew attention of Rule 4(b)(i) & (ii) as reproduced in Swamy's Compilation of FRSR Part V HRA and CCA (13th Edition) which reads as follows:-

"(b)(i) The allowance shall not be admissible to those who occupy accommodation provided by Govt. or those to whom accommodation has been offered by Government but who have refused it. In the latter case, the allowance will not be admissible for the period for which a Govt. servant is debarred from further allotment of Government accommodation under the allotment rules applicable to him."

(ii) The house rent allowance drawn by a Govt. servant who accepts allotment of Government Accommodation, shall be stopped from the date of occupation, or from eight days after the date of allotment of Government accommodation, whichever is earlier. In case of refusal of allotment of Government accommodation, house rent allowance shall cease to be admissible from the date of allotment of Government accommodation, ^{In case of Surrender of Government accommodation,} ~~and~~ the house rent allowance, if otherwise admissible, will be payable from the date of such surrender.

NOTE: In the case of surrender Government accommodation, the house rent allowance, if otherwise admissible, will be payable from the date from which 'No Accommodation Certificate' is issued by the Accommodation Controlling Authority.'

Under the rule a Government servant is not entitled to house rent allowance if accommodation is offered by the Government to him but he refused to accept it. House rent allowance was also not admissible in case of a Government servant who accepted the allotment of government accommodation. The learned counsel for the respondents cited the case of N.Purushothaman v. Union of India and others (1995) 31 AIC 257. This judgment is based on a judgment of the Apex Court in Director Central Plantation Corps Research Institute Kersrato v. M.Purushothaman in which it was held that if an employee is offered Government accommodation and lives elsewhere in the rented premises, he would not be entitled to house rent allowance. The judgment cited by the learned counsel for the respondents makes the house rent allowance inadmissible when accommodation offered is accepted and may not be adequate or if accommodation offered is refused. The learned counsel for the applicants seeks to counter this assertion of learned

counsel for the respondents by referring the case of Dr.S.K.Ghose v. Union of India (1991) 16 ATC 252. In this judgment it has been held that if an employee stays in a guest house where he is allowed to stay for a short duration and is asked to pay a daily charge of a few rupees per day he will be entitled to house rent allowance and it will not be deemed to be ^{equivalent to} accommodation in hostel accommodation. In short in this judgment it has been held that such ~~this~~ accommodation is not hostel accommodation. In the case before us the applicants were ^{not} staying in a guest house but were staying in the N.G.O. mess in Quarter No.T-64/1 at Clerical line at payment of Rs.2/- per day per bed. The N.G.O. mess was being managed by the respondents and was government accommodation obviously in the nature of type of accommodation ~~and~~ ^{which} would be nearer to hostel than to guest house accommodation. Hence the ground taken by the applicant that the applicants are entitled to house rent allowance is just because they were staying in N.G.O. mess, could not be accepted.

6. Another ground taken by the learned counsel for the applicant is that the respondents had passed the impugned orders on the basis of Ordnance Factory Board Memorandum No.729/QR/A/W dated 7.10.94 in which it was laid down that the officers staying in insufficient bungalow/officer's hostel/officer's mess would not be entitled to draw house rent allowance for the period during which stay in such accommodation, because only subsidised rent and not market rent was charged. This memorandum was brought to the notice of the Ordnance Factory, Bhusawal by letter of Director General, Ordnance Factory on 16.11.94. The applicants had occupied the N.G.O. Mess only upto 1990 and memorandum dated 7.10.94 could in ~~any~~ ^{no} case be made

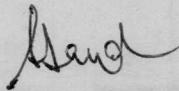
applicable to the applicants. The learned counsel for the respondents had countered it by saying that Rule 4(b) (i)(iii) in Swamy's Compilation of FRSR which had been relied upon by them were applicable from the very beginning and the applicants were governed by such rules. The case cited by the learned counsel for the respondents in N.Purshothaman v. Union of India (supra) makes it clear that the provisions were applicable even to cases which were prior to 1994 because the case related to a Sub-Postmaster for a period from 4.3.88 to 30.10.90, hence it cannot be taken that similar rules were applicable earlier in which Government accommodation although identical was offered and accepted by the Government officers.

7. The learned counsel for the applicant has also raised the issue of estoppel as the officers, under whom they were working and ~~the~~ ^{was} incharge of the N.G.O. mess, had passed an order for the stay of the applicants in the mess had referred to the higher authorities for not realising any house rent allowance from the applicants because they were paying daily charges of the N.G.O. mess. The bar of estoppel would not ~~estoppel~~ ^{apply} where rules provide that house rent allowance would not be admissible to Government Officials who have been offered and have accepted Government accommodation. Hence this ground is also of no avail to the applicants. The counsel for the respondents has mentioned that five officials were covered by audit objection and were asked to pay back the house rent allowance. Stay had earlier been given in ^{case of the applicants} ~~case of the applicants~~ ^{he} ~~he~~ although ^{their case} ~~three~~ had already paid the amount of house rent allowance received by them and recovery ~~only~~ only in the case of two applicants was pending. The learned counsel for the applicant, on the other hand, has cited the cases

of some officials who received the H.R.A. although they were staying in the Government accommodation of similar types as the applicants had. This position is admitted by the respondents in their counter reply. However, since the payment of house rent allowance is dehors^{in their case} the rules on the issue as contained in the FRSR, the relief claimed by the applicant is not admissible. In effect the application fails^s and is dismissed.

There shall be no order as to cost.

Gc


ADMINISTRATIVE MEMBER