

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW DELHI~~
~~XXXXXXXXXX~~

O.A. No.
~~XXXXXX~~

443

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DATE OF DECISION 17.3.1989Smt. Khatijabanu Ajazhusen Malik PetitionerParty-In-PersonAdvocate for the Petitioner(s)

Versus

Office of the Accountant General Respondent
Accounts and Entitlement.Shri J.D. AjmeraAdvocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.M. Joshi : Judicial Member

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

OA/443/86

Smt. Khatijabanu Ajazhusen Malik,
A.C. II Section,
Office of the Accountant General,
Accounts and Entitlement,
C.Block - 8th Floor,
Multystoreyed Building,
Lal Darwaja,
Ahmedabad.

.... Applicant

(Party in Person)

Versus

Office of the Accountant General
Accounts and Entitlement,
6th Floor, 'C' - Block,
Multy Storeyed Building,
Ahmedabad Branch,
Ahmedabad,
Gujarat.

.... Respondent

(Advocate : Shri J.D. Ajmera)

Coram : Hon'ble Mr. P.M. Joshi : Judicial Member

17/3/1989

O R A L - O R D E R

Per : Hon'ble Mr.P.M. Joshi : Judicial Member

The petitioner Smt. Khatijabanu Ajazhusen Malik, Party-in-Person, has filed this application on 5/12/1986 under Section 19 of the Administrative Tribunals Act, 1985. The petitioner Smt. Khatijabanu Ajazhusen Malik is holding the post of Accountant and her husband ^{is also} Shri A.A. Malik holding the post of Senior Accountant in the Office of the Accountant General, Ahmedabad. The petitioner has challenged the validity of the office order No. 173/, dated 12.11.1986 passed by the Accounts Officer whereby she was directed to pay a sum of Rs.3460.86 being the amount of House Rent Allowance paid to her for the period 24.1.82 to 28.2.85. The said order reads as under :

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Office Order No. 178 Dt. 12-11-1986.

Smt. K.A. Malik, Acctt, is informed that she has been irregularly paid H.R.A. for the period from 24-1-82 to 28-2-85 as she was not entitled to HRA as her husband occupied Govt. quarter and there was no prima facie case of legal separation.

Accountant General (A&E) has therefore, ordered to recover the H.R.A. amounting to Rs.3460.36 for the above, period from her salary in lump:

(Accountant General's Orders DT.11.4.86)

Sd/-

Accounts Officer (Bills)

2. According to the case set up by the petitioner - she had informed the authorities that she was living separate from her husband from 24th January 1982 for some domestic reasons under letter dated 13/2/1988 and accordingly she had requested that the House Rent Allowance be sanctioned in her case. It is alledged by the petitioner that once the House Rent Allowance is sanctioned and paid to her the order of recovery is unjust and illegal. The petitioner had therefore, prayed that the impugned order be quashed and set aside.

3. After the application was admitted the respondents are restrained from recovering the amount in question by way of interim relief, granted in favour of the petitioner.

4. The respondents have resisted the petitioner's application and denied the assertions and allegations made against them. According to them, the husband of the petitioner has been allotted a Government accommodation at "Shah-alm-Roza," Government 'F' Colony, at Ahmedabad, and thus she is not entitled to House Rent Allowance as

the fact whether she resides with her husband or not is not material. It is submitted that the petitioner is not entitled to House Rent Allowance under the provisions contained in para - 5 of F.R.

5. When the matter came up for hearing the petitioner - Party -in-Person and Mr.J.D. Ajmera for the respondents are heard. The materials placed on record are also perused and considered.

6. The main grievance of the petitioner is that when she has not actually stayed with her husband, during the relevant period and when she contributed to her father towards the house rent, she is entitled to claim House Rent Allowance. According to her, when such House Rent Allowance was duly sanctioned on proper interpretation of the provisions of the rules, the action of the respondents in recovering the same is neither just nor legal. During the course of her submission she has pressed in service Clause -(E) of Rule-5 dealing with the conditions of drawl of House Rent Allowance. The said provision reads as under :

(e) As an exception to sub-paragraphs (a) and (b) above, Government servants drawing pay up to Rs.1,069 other than a Government servant who is living in a house owned by him and drawing pay up to Rs.1,069 shall be eligible for house rent allowance at the rates specified in paragraph 1 above even if they share Government accommodation allotted to other Government servants (excluding those mentioned in (C) above) or private accommodation of other Government servants (including those mentioned in (C) (ii) and (iii) above) subject only to the condition that they pay rent or contribute towards rent or house or property tax but without reference to the amount actually paid or contributed. As an exception to para 7, the grant of house rent allowance to a Government servant living in his/her own house or to a Government servant living in a house owned by a Hindu undivided family in which he is a co-parcener, and whose pay does not exceed Rs.1,069 will be without reference to the amount of the gross rental value as assessed by the Municipal Authorities. Thus, in the case of such Government servants it will be necessary to insist on the production

of the assessment of the rental value by the Municipal Authorities for purposes of claiming house rent allowance.

7. As against this Mr. J.D. Ajmera for the respondents contended that the provisions contained in para (e) - of F.R. - 5, do not apply in the case of the petitioner. In his submission the petitioner is not entitled to house rent allowance under clause - 'C' (iii) of F.R. - 5 (2). The said provision reads as under :

(c) A Government servant shall not be entitled to house rent allowance if -

x x x x x x x x x x x x x
(iii) 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.

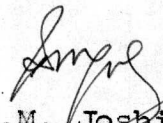
8. The fact that the petitioner and her husband are both government servants in the same department is not in dispute. More over the fact that her husband was allotted with a government quarter, and the petitioner was staying with her ^{husband} prior to the relevant period with him is not controverted. It is the case of the petitioner that she was not staying with her husband during the period 24-1-1982 to 28-2-1985 and as such, she is entitled to claim House Rent Allowance. It is conceded by the petitioner that her case does not come within the perview of the provisions contained in Clause-'A' and 'B' of F.R. - 5. On the plain reading of the provisions contained in Class - 'E' (cited above) and exceptions, seem to have been provided in the case of the government servant drawing pay upto Rs.1,069. The said provisions make amply clear that the benefit of an exception is admissible to Government servant who is living in a house owned by

him. Admittedly it is not the case of the petitioner that she was staying in the house owned by her or the house owned by her father or that she was a member of a Hindu undivided family. The provisions contained in Sub-class-III of Clause - 'c' of F.R. - 5, leave no room for any doubt that a government servant, is not entitled to House Rent Allowance if his or her wife or husband has been allotted accommodation at the same station by the Central Government. The Rule makes no exception in a case, whether he or she resides in that accommodation or he/she resides separately in accommodation rented by ^{him} ~~he~~ her. Thus, when the petitioner started living separate from her husband during the relevant period and stayed with her father, ^{that} does not entitle her to claim House Rent Allowance. Even though, she contributed some part of the rent to her father, it would not entitle her to claim such allowances under the rules.

9. It is true that the petitioner has been paid H.R.A. for the relevant period either by mistake or ^{through} ~~in~~ advertence on the part of the officers of the Respondent. According to the respondents, such payment was made under a mistake and the Government has a right to ^{if} ~~correct~~ its mistake and as a result of such illegal action, ^{if} ~~any~~ claim has been sanctioned, the Government has every right to recover the same. Having regard to the circumstances of the case, the petitioner has failed to establish how the respondent's order for recovery was bad in law. Hence, it can not be said that the impugned order, directing the recovery in the sum of Rs.3,460.86 is bad in law. The respondents' claim for recovery is borne out by the rules and hence it is found quite just and legal. There are no valid grounds to interfere with the respondents'

action in recovering with the House Rent Allowance. However, when the petitioner happens to be a class-III employee in the department, instead of recovering the amount in lump sum, it would be quite desirable for the authorities to order recovery by way of proper instalment. I am sure the petitioner would make such representations in this regard and I have no doubt the respondents will consider the same sympathetically.

In this view of the matter, the application fails as it is devoid of merits whatsoever and accordingly, the application stands dismissed with no order as to costs.


(P.M. Joshi)
Judicial Member

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