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Central Administrative Tribunal

Cuttack Bench, Cuttack.

Regn. No. OA 115 of 1988

Date of decision: 28.7.1989

Gulab Choudhary

....

Applicant

**Vs.**

Union of India & Others

.....

Respondents

PRESENT

Mr. Jayanta Das, Counsel for the applicant.

Mr. A.B. Mishra, Senior Standing Counsel, for the respondents.

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Hon'ble Mr. B.C. Mathur, Vice-Chairman.

Hon'ble Mr. N. Sen Gupta, Judicial Member.

(Judgment of the Special Bench delivered by Hon'ble Mr. B.C. Mathur)

Original Application No. 115 of 1988 was heard by a Division Bench and after hearing the applicant and the Senior Standing Counsel (Central) decided on 26.5.89 to refer the matter to the Hon'ble Chairman, Central Administrative Tribunal, for constituting a Larger Bench as in this application a substantial point of law of public importance had been raised. The Hon'ble Chairman, to whom the case was referred, was of the opinion that a Larger Bench or a Full Bench is to consider cases where there are conflicting views on question of law by two or more Benches of the Tribunal. Each Bench is competent to dispose of any substantial question of law if there is no decision contrary by another Bench. The Chairman, however, constituted a Special Bench to hear this case consisting of Vice-Chairman

(A) of the Principal Bench and the Judicial Member of the Cuttack Bench to hear and decide this matter.

2. This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri Gulab Choudhary, Deputy Director, Survey of India, South Eastern Circle, Bhubaneswar, against O.M.No. 11013/2/86-E.II(B) dated 19.3.87 of the Ministry of Finance, Department of Expenditure (Annexure 'A' to the application) fixing House Rent Allowance and City Compensatory Allowance payable to the Central Government employees on the basis of population of cities in which the employees would be serving. The applicant prays to declare the principle of granting these allowances on the basis of population of cities ultra vires and illegal being violative of the provisions contained under Articles 14 and 16 of the Constitution and that the respondents should be directed to pay House Rent Allowance and City Compensatory Allowance to the applicant at the same rates as in B-1 class cities with effect from 31.7.87 and also to direct the respondents to pay these allowances at the same rate as payable to the Bank employees and employees of other Public Sector Undertakings or in the alternative, the applicant be allowed to hire private residential accommodation according to his entitlement after getting the rent assessed by the local C.P.W.D. as is done in the case of hired office accommodation and the amount of rent assessed in excess of the licence fee fixed for the entitled type of accommodation should be the liability of the Government and not of public servants, including the applicant.

3. Briefly, the case of the applicant is that on his transfer from Patna to Bhubaneswar, he is suffering financially. At Patna, which is declared a B-2 city for House Rent Allowance and B-1 city for City Compensatory Allowance, the applicant was getting HRA at the rate of Rs. 800.00 per month and CCA at Rs. 75.00 per month as the applicant's basic salary was falling within the pay range of Rs. 3600-4499. The applicant was actually paying rent at Patna in respect of a hired house at the rate of Rs. 900.00 per month. After his transfer to Bhubaneswar, the applicant is getting a reduced H.R.A. at the rate of Rs. 400.00 per month with no City Compensatory Allowance. At Bhubaneswar, the applicant has taken a house which is lower than his entitlement and while he is occupying a smaller house and paying a higher rate at Bhubaneswar compared to Patna, he is deprived of Rs. 475.00 towards H.R.A. and completely denied the City Compensatory Allowance of Rs. 75.00 per month. The applicant has stated <sup>that</sup> his posting at Bhubaneswar is not due to any act or omission on his part, but he had to carry out the order of transfer passed by the Government and he is suffering monetary loss to the above extent for no fault on his part. His counterparts at Calcutta, Patna, Bombay, Madras etc. are reaping the benefit which the applicant has been deprived and hence this amounts to discrimination and is, therefore, violative of the provisions contained under Articles 14 and 16 of the Constitution.

4. According to his pay scale, the applicant is entitled to 106 sq. metres of living area and, therefore, applied to

Government to provide him with this accommodation or allow him to take on hire accommodation according to his entitlement and charge him rent as is charged from officers occupying Government accommodation and the balance amount should be paid by the Government.

5. The applicant has stated that Bhubaneswar is a capital city and cannot be equated with other cities in the country. Similarly, there is a lot of pilgrim traffic at Bhubaneswar and these add to the cost of living. These considerations are very relevant in categorising a place for purposes of HRA and CCA and the population cannot be the sole criteria for this purpose. This has lead to the reduction of the applicant's emoluments by Rs. 475/- per month due to loss in HRA and CCA even though the applicant has sacrificed 20 sq. metres of entitled living accommodation at Bhubaneswar.

6. The basic argument of the applicant is that the Government is under obligation to provide residential accommodation to its employees. Where the Government residential accommodation is not available, it gives HRA to the employees in order to meet the rent of the hired accommodation. Where a Government servant is allotted Government accommodation, he does not get HRA. Depending on the type of residential accommodation allotted, he has to pay a fixed licence fee on flat rate basis irrespective of the classification of the city from which it follows that, as far as its own residential accommodation is concerned, the Government does not accept that rents on Government houses depend on their locations in different cities.

The contention of the applicant is that for the same type of accommodation, with same living area, the rent of the houses should not depend on the population of the city but on other relevant factors which are responsible for the rent of the houses. Again, it has been stated that there are no intermediate amounts of HRA in the vast range of population from 50,000 to 4 lakhs classifying cities as B-1, B-2 and C class for purposes of HRA. His contention is that <sup>Bhubaneswar</sup> ~~703~~ is not less costlier than other State capital cities like Patna and as such, he should not suffer financially on his posting at Bhubaneswar which is categorised as a 'C' class city.

7. The respondents in their reply have stated that as per the criteria, cities/towns are classified for House Rent Allowance and City Compensatory Allowance on the basis of their population as revealed in the decennial census figures. According to the criteria, cities/towns are classified as 'A' class if the population is more than 16 lakhs, B-1 class if the population is between 8 lakhs and 16 lakhs, B-2 class if the population is between 4 lakhs and 8 lakhs and C class if the population is above 50,000, but no City Compensatory Allowance is admissible in 'C' class cities. The current classification of cities is based on the population figures of 1981 census. As Bhubaneswar is a 'C' class city, no City Compensatory Allowance is admissible to officers posted there and HRA is allowed at the rate of Rs. 400.00 per month as admissible according to O.M. dated 19.3.87 (Annexure R-1 to the counter). It has been claimed that there is no discrimination as against the applicant and other similarly placed employees. The claim of the applicant that Cuttack and Bhubaneswar should be treated as one city has also been denied as Bhubaneswar is situated at a distance of about 35

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KMs from Cuttack in the District of Puri. Both the cities have their separate municipal bodies and merely because some persons residing in Cuttack or Bhubaneswar attend work in either city is no justification for clubbing the population of both the cities for the purposes of HRA and CCA. It has been denied by the respondents that Government has any obligation of finding out accommodation for each and every employee. Wherever Government accommodation is available, every attempt is made to provide such accommodation to the eligible officers, but it is for the employees to find suitable private accommodation for which limits of HRA and CCA have been fixed on a uniform basis on the classification of the places based on population and there is no discrimination against individual Government employees. The HRA and CCA are payable to Central Government employees as decided by the Government in O.M. dated 19.3.87 which are based on the recommendations of the 4th Pay Commission and the established policy of the Government. It is the policy of the Government to provide Government accommodation to its employees to the maximum extent possible. This is, however, a welfare measure and not an obligation on the part of Government as an employer. HRA and CCA are among other allowances given to employees and decided under well established considerations with reasonable uniformity throughout the country. Population is a major factor of consideration and as such forms the basis for determination of HRA and CCA. A city being a capital of a State or a pilgrim town cannot by itself invalidate the principle followed by the Central Government. It has been stated that Government is

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trying to construct accommodation at all stations and the Government of Orissa has already allotted land to the Survey of India where the applicant is employed for construction of Government accommodation. It has also been stated that the terms and conditions of Central Government employees are entirely different from the terms and conditions of service of employees of Banks and Public Sector Undertakings and there cannot be any comparison between the two to infer discrimination.

8. The learned counsel for the applicant said that the criteria for fixing the classification of towns and cities must be reasonable and it is generally an accepted principle that when the foundation of such fixation is not rational, it would be considered arbitrary and violative of Articles 14 and 16 of the Constitution. The Third Pay Commission had recommended that the classification of a town could not be only on the basis of population and had recommended that Government should take houses on long lease and make residential accommodation available to the employees on payment of 10% of their pay. The Commission further recommended that Government should lay down appropriate house rent allowance rates in different cities and towns based not on population but on actual assessment of the prevailing levels of rents in different cities and towns. Alternatively, certain notional rents for different types of accommodation meant for officers and personnel of the specified pay groups should be laid down for particular cities after studying actual conditions in the city. The difference between the actual rent paid and 10% of pay should be reimbursed, subject to a maximum of difference between the notional rent

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and 10% of the pay. The 4th Central Pay Commission endorsed these recommendations of the 3rd Pay Commission regarding taking houses on long lease basis for allotment to Government employees. He said that while Government have generally accepted the recommendations of the 3rd and 4th Pay Commissions, they have not given any reasons for not accepting the above recommendations and as no reasons have been given by Government for excluding implementation of these recommendations, these should be considered as arbitrary and cannot be reasonable. Shri Das emphasised that even in the matter of welfare measures, the courts must examine whether the norms stated by Government are reasonable and these cannot be arbitrary. He said that there can be no doubt that once a criteria is evolved and followed uniformly, there would be no charge of discrimination but the reasonableness of the criteria is always subject to judicial review. He said that <sup>even</sup> in the case of dispensation of largesse Government has to be reasonable. He cited three Supreme Court cases to support his argument:

1. AIR 1979 Supreme Court 1628 - Ramana Dayaram Shetty Vs. The International Airport Authority of India & Others.

In this case, while emphasising Article 14 of the Constitution, the Supreme Court had held that Government has to act reasonably and should disclose that standards laid down by them are not arbitrary but reasonable.

2. AIR 1973 Supreme Court 1088 - Purshottam Lal and Others Vs. Union of India and another.

This case relates to the recommendations of the 2nd Pay Commission when Government had accepted the recommend-




ations partly. It was held that there has to be equal pay for similar work.

3. AIR 1986 Supreme Court 806 - Union of India & Others Vs. Godfrey Philips India Ltd., India Tobacco Co. Ltd. and The Vazir Sultan Tobacco Co. Ltd. etc.

This case deals with the question of promissory estoppel. The Court held that if an assurance has been given and not fulfilled, the doctrine of promissory estoppel will apply.

9. The learned counsel for the respondents said that no assurance was given about giving any particular house rent or classification of cities and as such, promissory estoppel will not arise.

10. Shri A.B. Mishra, Senior Standing Counsel for the respondents, said that the court should confine itself to the relief sought by the applicant where he has prayed that the HRA and CCA should not be based only on population <sup>of</sup> ~~but~~ <sub>the</sub> city and to direct the respondents to pay HRA and CCA to the applicant at the same rates as given <sup>for</sup> ~~for~~ B-1 class cities. He emphasised that the rules of classifying cities and towns into various categories are applied uniformly and are not discriminatory in any sense. He said that Government appoints expert bodies like Pay Commissions for determining the pay and allowances as well as classification of cities into various categories. He said that growth of population is a result of various factors. These include whether a place is capital of a State, a centre of pilgrimage, a tourist centre, an industrial area, etc. The growth of any one of the above will automatically increase the population and is likely to affect the number of



houses available in a particular city or place. Therefore, the criteria of population is not a single factor, but a factor which is a result of many other circumstances and should be considered as reasonable. Since HRA is dependent on the availability of houses which varies on the growth of population, Government has accepted the population criteria in fixing the classification of cities in various categories. Government is an institution and does not work on whims of any persons. He also said that no representation has been made to the Government and at least copies of no such record have been filed before the court and, therefore, being a welfare measure, the court should not interfere and reject the application. He cited the case of Unikat Sankunni Menon Vs. The State of Rajasthan - AIR 1968 Supreme Court 81 - where special pay had been allowed to officers of the Rajasthan Civil Service but not to the IAS and the court held that discrimination can be seen only where there is a substantive right of a person and which has been violated. Unless a substantive right exists, the question of discrimination under Articles 14 and 16 would not arise. There has to be reasonableness or intelligible difference, but the cases are not based on equity as such.

11. We have gone through the pleadings and heard the arguments of the learned counsel on both sides carefully. It is obvious that there can be no comparison between the facilities provided to Government employees and those in the Banks and Public Sector Undertakings. The main point before us is whether the applicant has any right which has been violated and whether the criteria of population fixed by Government for the purposes

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of classification of cities/towns into various categories are arbitrary and unreasonable. It is accepted <sup>that</sup> House Rent and other allowances are a part of welfare measures, but no obligation on the part of Government has been established that the same must be paid and at particular rates. Since, however, Government has classified towns and cities and fixed different rates, it has to be seen whether these are reasonable or not. It will be very difficult for a court to lay down the criteria for the classification of cities and towns. These are matters best left to an expert body which may be appointed by Government from time to time for assessing the same. Nor can the court decide about the quantum of allowances to be paid to various Government employees like HRA, CCA etc. It is also not easy to lay down a detailed procedure for fixing criteria because conditions vary from place to place and from time to time. There is a lot of force in the argument by the learned counsel for the respondents that population is not static but changes from time to time. Under certain circumstances, the population can even go down, but the factors mentioned by the applicant like place of pilgrimage, capital city of a State, industrialisation, development of tourism etc. will affect the growth of population substantially and, therefore, the criteria of population for fixing up the classification of a place cannot be considered as unreasonable and may be taken as a workable criteria and as long as this criteria is applied uniformly by the Central Government throughout the country, the question of any discrimination or arbitrariness should not arise. In the circumstances, we are not in a

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position to grant any relief as prayed for by the applicant, but we hope that these matters will engage the attention of the Government from time to time. With these observations, the application is disposed of accordingly. The parties will bear their own costs.

*N. Sen Gupta*  
28-7-89  
(N. Sen Gupta)  
Member (Judicial)



*B.C. Mathur*  
28.7.1989  
(B.C. Mathur)  
Vice-Chairman

Central Administrative Tribunal,  
Cuttack Bench, Cuttack.  
July 28, 1989/Sareen, P.S.

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**Central Administrative Tribunal  
Cuttack Bench, Cuttack.**

No. R.A. 25 of 1989 in OA 115 of 1988

• Gulab Choudhary

Applicant

Versus

Union of India & Others

Respondents

This is a review application filed by Shri Gulab Choudhary against the orders of the Tribunal passed on 28.7.89 in Original Application No. 115/88. We find that the applicant has reiterated the same grounds and contentions as were made by him in the original application, including the recommendations of the Third and Fourth Pay Commissions. He has made the point that had he been posted in a place like Delhi, Calcutta, Hyderabad, etc. he would have been allotted Government residential accommodation on payment of standard licence fee, but no Government residential accommodation is available in Bhubaneswar and he has to bear the burden of extra expenditure by his posting at Bhubaneswar <sup>Ba</sup> and ~~not being compensated by treating Bhubaneswar~~ <sup>Ba</sup> ~~at par with places like Patna.~~ <sup>Ba</sup> He has said that the quantum of house rent allowance fixed on population basis is arbitrary. Even otherwise, the population of Bhubaneswar which was 2,19,211 according to 1981 Census figures, has been increasing every year during the past 8 years and has already exceeded the figure of 4 lakhs and as such, HRA admissible to him must be much higher.

2. We cannot accept this contention as the population of <sup>ed</sup> a city can be ascertain/ by only Census which is due in 1991. We have already considered all the points raised by the applicant in the review application while disposing of the original application.

3. A review application can be allowed only when there is discovery of new and important matter of evidence which after exercise of due diligence was not within the knowledge of the applicant and could not be produced by him at the time when the order was passed or on account of some mistake or error apparent on the face of the record. We find that neither any

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new and important matter has been brought out in the review application nor is there any error apprent on the face of the record. In the circumstances, the review application is rejected.

*N. Sengupta*  
(N. Sengupta) 7.2.90.

Member (Judicial)



*B.C. Mathur*  
(B.C. Mathur) 7.2.1990

Vice-Chairman