

In the Central Administrative Tribunal  
Calcutta Bench

OA 1424/96

Present : Hon'ble Mr.S. Biswas, Member(A)

R.K. Das Sharma, S/o Late R. Das Sharma, aged about 60 years retired Senior Personnel Inspector, Metro Railway, 33/1. Chowringhee Road, Calcutta-71

...Applicant

-Vs-

1) Union of India service through the Chairman, Railway Board & Ex Officio Chairman, Railway Board, Ministry of Rlys, Rail Bhawan, New Delhi - 1

2) The General Manager, Metro Rly, 33/1, Chowringhee Road, Calcutta-71

3) The Dy. Chief Personnel Officer, Metro Railway, 33/1, Chowringhee Road, Calcutta-71

4) The Senior Personnel Officer, Metro Railway, 33/1, Chowringhee Road, Calcutta-71

...Respondents

For the applicant : Mr.P.B. Mishra

Mr.T.K. Biswas

For the respondents Ms K. Banerjee

Date of Order : 23/4/03

ORDER

Mr.S.Biswas, Member(A) :

The applicant has filed this OA challenging the decision of the respondent authorities<sup>for</sup> deducting a sum of Rs 20,989.00 from the DCRG amount.

2. The admitted facts of the case are that the applicant while working under the Metro Rly, married to a staff nurse who was also a Rly employee working under the N.F. Rly. The marriage occurred in 1978. In 1976 i.e. before his marriage, the<sup>applicant</sup> obtained a House Building loan from the respondent authorities for construction of a house of his own. Accordingly, he purchased a land and constructed a house thereupon at Howrah. After his

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marriage, his wife, who was a staff nurse under the N.F. Rly, prayed for transfer to Calcutta so that they could live together. Her representation in this regard was considered by the authorities and she was allowed a transfer in 1979 to Metro Rlys and she was posted at the Metro Rlys Medical Unit at Tallygunj. Though she did not apply for a Rly Quarter and was residing along with her husband, she was allotted a quarter near her place of posting at Tallygunj on 12-8-91 and she was asked to live there. According to applicant, since he had built a house of his own after obtaining HBA from the Rlys, he was residing at his own house, whereas his wife was living in the allotted Rly Quarter at Tallygunj. The applicant was drawing HRA while his wife was not drawing any such HRA as she was allotted quarter. In 1992, a circular was issued by the Metro Rlys to all the employees through their HOD to furnish information regarding allotment of quarter to their respective spouse. In response to the circular, the applicant vide letter dated 17-3-92 (Annexure A5) intimated the authorities that his wife was working in the Medical Department of Metro Rlys and was allotted a quarter and that she was not getting any HRA, but the applicant was residing separately in his own house, which was constructed after obtaining HBA and as such he was drawing HRA. Even after this declaration, the applicant was allowed to draw HRA and he eventually retired from service on 31-8-95. Just before his retirement, it was intimated that the applicant drew HRA for the period from 12-8-91 to 30-6-95 although his spouse was provided with a Rly quarter and as such the

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applicant was liable to pay back the amount drawn as HRA for the aforesaid period. The applicant made a representation and ultimately the amount of Rs 20989/- was recovered out of his DCRG amount of Rs 88414/- by way of adjustment of irregular drawal of HRA vide Annexure A-12. The applicant again made a representation dated 24-6-96, but to no effect. Hence this OA praying for cancellation of the impugned order recovery of over drawal amount of HRA from his DCRG and refund of the deduct amount of Rs 20989/- along with interest @ 18%.

3. The respondents have contested the application by filing a reply in which it is stated that according to rules, if Rly Quarter is allotted to Rly employee or their spouse, they are not entitled to HRA. It is stated that the wife of the applicant was allotted a Rly Quarter near her working place on 12-8-91. Although she was at liberty to refuse the allotment, she occupied the same without any objection. Even after the retirement of the applicant, the wife of the applicant was occupying the quarter. When this fact came to the notice of the authorities and it was found that the applicant drew HRA which was not admissible to him under the rules, the overdrawal amount was adjusted from the DCRG under the relevant provision of the Rly Services (Pension) Rules. It is further stated that the applicant was given prior show cause notice and after consideration of his representation, impugned order was issued and hence there was no illegality in realising the HRA overdrawn by the applicant contrary to the rules and adjusting the same from his DCRG.

4. I have heard the learned counsel for the parties and have gone through the various documents

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produced before me.

5. The learned counsel for the applicant submitted that the applicant intimated the authorities about the fact that he was residing separately, although his wife was allotted a Rly Quarter and in spite of this information given to the respondent authorities as long back as 17-3-92, the respondent authorities continued to pay him HRA. It is further submitted by the learned counsel for the applicant that the applicant built a house after taking a loan from the Rlys and this fact was also known to the Rly authorities. Therefore, the applicant could not be move out to the quarter allotted to his wife and was compelled to reside at his own house as otherwise there may be theft or damage to the house. He has also pointed out that as the house was constructed after taking housing loan, till such loan was repaid the applicant was duty bound to protect the building as it was mortgaged to the Rlys. He has also drawn my attention to Annexure A6, which is written by the Dy.Chief Personnel Officer, Metro Rly to FA & CAO, Metro Rly on 21-8-95 wherein the clear picture was given. The Dy. CPO intimated that drawal of HRA by the applicant was in order and therefore the question of recovery of HRA from his settlement dues would not arise. The learned counsel has therefore argued that the authorities knowing fully well about the full facts continued to pay HRA to the applicant and hence they cannot now recover the same from the DCRG of the applicant after his retirement.

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6. The learned counsel for the respondents, on the other hand, has drawn my attention to the Rly Board's letter dated 7-9-71 and 17-1-89 enclosed as Annexures R1 and R2 to the reply. It is provided therein that a Rly Servant is not entitled to House Rent Allowance if he/she resides in accommodation allotted to his wife/her husband or to his/her parents/son/daughter by the Rly/Government/an autonomous public undertaking/Semi Government Organisation, such as Municipality, Port Trust etc. It is submitted by the learned counsel for the respondents that the applicant's wife was allotted a quarter near her place of working. However, she did not refuse the same and continued to occupy the said quarter even after retirement of the applicant. This clearly proves that the said quarter was utilised by the wife of the applicant as well as by the applicant. It is contended that even though the applicant constructed a house of his own, when a quarter was allotted to his wife and she accepted the allotment, the applicant was not entitled to HRA as per rules. The drawal of HRA by the applicant was irregular and this was detected by the statutory audit. Subsequently the recovery was ordered. Recovery was made after considering his representation against the same. Therefore, there was no illegality in the recovery order.

7. I have carefully considered the rival contentions. The first point raised by the respondents is that when the wife of the applicant was allotted a Rly Quarter near her working place on 12-8-91, she

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accepted the same. It is their case that the wife of the applicant could have easily refused to accept the quarter and in that case there was no difficulty in payment of HRA to both of them. However, the wife of the applicant occupied the same even after the retirement of the applicant.

The second point taken is that payment of HRA and CCA is governed by Paras 1701 - 1715 of Chapter XVII of Indian Railway Establishment Code Vol.II. According to para 1706 it is provided that HRA shall not be granted to a Railway employee if he does not incur any expenditure on rent for his accommodation; or he occupies accommodation provided by the Government; or he shares Government accommodation allotted rent free to another Government servant; or he/she resides in accommodation allotted to his/her parents/son/daughter by the Central Government/State Government/ an autonomous public undertaking or semi-Government organisation etc. It is also provided therein that if his wife has been allotted a quarter at the same station by the Central Government/State Government etc. no HRA will be admissible to him. It is the contention of the respondents that when the wife of the applicant was provided with a Rly Quarter, the applicant being also a Rly employee and posted in the same station is expected to live with his wife and hence he is not entitled to HRA.

8. Regarding the first point it may be noted that HRA is not a part of pay. It is a compensatory allowance within the meaning of FR 44. It is given to compensate for amenities which are not available or provided to the employees. The moment the amenities are provided or offered the employees should cease to be in

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receipt of the Compensation which is given for want of it. HRA is paid when a Government accommodation is not provided to a Government servant. But as soon as a Government accommodation is provided to the Government employee he is duty bound to accept the same. He cannot refuse to occupy the same. Even if he refuses he may not be entitled to HRA. (Vide AIR 1994 SC 2541 Director Central Plantation Crops Research Instt. Kesaragod and others V. M. Purushothaman and others). Thus the contention of the respondents that the wife of the applicant could have refused the offer of allotment of quarter is not tenable. As a Rly employee when a quarter is allotted to her in administrative interest she is duty bound to accept the same, especially when she is a nurse and her presence near the health unit is essential, else she may lose the facility of payment of HRA, in lieu of a quarter.

9. It is the admitted position that in 1976 the applicant took Government loan for construction of a house of his own. He constructed his own house at Howrah. According to the terms of such loan, the building is mortgaged to the Government and till entire loan amount is repaid the mortgage is not discharged. Therefore, till the entire loan is not repaid the employee remains only as lesee and it is his duty to look after the house, which, for all practical purposes remains as Government property till the entire loan amount with interest is not repaid. Therefore, even when his wife was allotted a quarter he was staying at his own house. This contention of the applicant cannot be brushed aside lightly. The applicant has produced at

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Annexure A14 copy of ration card belong to his own name at Howrah, to show that he was residing there at the relevant time.

10. The applicant intimated his superior authority in response to a Circular dated 17-2-92 i.e. after the allotment of quarter to his wife, that he was residing at his own house which was built after obtaining HRA and was drawing HRA, whereas his wife was provided with a Rly quarter and was not drawing HRA. Even after this intimation the Rly authorities continued to pay him HRA, despite the fact that the Rly Board's circular relied by the respondents in their reply were existing at that material time. Even when objection was raised regarding drawal of HRA by the applicant, the Dy.CPO explained the position to the FA & CAO and suggested that drawal of HRA by the applicant was in order and hence the question of recovery did not arise. In this context para 4 & 5 of the said letter of Dy.CPO dated 21-8-95 may be relevant and is quoted below :

"4. From the above it transpires that Smt Das Sharma did not apply for any railway accommodation and the same was allotted to her so as to ensure her presence in the medical unit whenever needed. Further, it is also a fact that necessary HBA was sanctioned to Shri Das Sharma as far as back in the year 1976 and with that HBA, he constructed his own house at Ramrajtala well before allotment of railway accommodation to his wife. Having constructed his own house at Ramrajtala Shri Das Sharma continued to live in his own house and his wife had to move to Tollygunj from 12-8-91 to reside in the Govt. accommodation. If otherwise, it would not have been necessary for Smt Das Sharma to stay out of their own accommodation at Ramrajtala. At the same time, it is also not advisable to ask Shri Das Sharma to lock his own house and stay with his wife at Tollygunj in order to discontinue payment of HRA to him when the Government financed him to construct his own house.

5. Needless to mention that it is incumbent

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on the part of Shri Das Sharma to ensure proper upkeep and maintenance of the house constructed with the help of HBA in terms of instructions contained in para 1629(8)/C&D of IREM. For this purpose, Shri Das Sharma is liable to incur expenditure towards maintenance and payment of municipal taxes etc."

11. The respondent authorities have not only justified with peculiar reasons why payment of HRA to the applicant could not be withheld, the respondent authorities have clearly abated upto a point of time for payment of HRA knowingly. Thus the applicant was not responsible for the drawal of HRA in his favour. He intimated to his employer well in advance and in spite of that he was allowed to draw HRA with full knowledge that his wife was allotted a quarter in a separate area. In such circumstances, I am of the opinion that this belated recovery of HRA from the DCRG of the applicant though permissible under the rules is not legally sustainable <sup>as</sup> per the tenor of the decision of the Hon'ble Supreme Court in the case of Shyam Babu Verma, 1994(2) SC 557.

12. For the reasons stated above, I am of the considered opinion that decision of the respondent authorities in deducting a sum of Rs 20989/- from the DCRG of the applicant towards realisation of the HRA allegedly wrongly drawn by him cannot be supported.

13. In the result, the application is allowed and the respondents are directed to refund Rs 20989/- to the applicant within 2 months from the date of the communication of the order. I do not think this is a proper case to award interest. No costs.

  
(S. Biswas)  
Member(A)