

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

D.A. 480/94

Friday, this the 30th day of September, 94

CORAM

HON<sup>BLE</sup> MR P SURYAPRAKASAM, JUDICIAL MEMBER

Smt B Leela, Sub Postmaster,  
Kakkanad Post, Cochin-30

.. Applicant

By Advocate Mr Shafik M.A.

Vs.

1 Senior Superintendent of Post Offices,  
Ernakulam Division, Kochi- 682 011. ... Applicant

2 Chief Postmaster General,  
Department of Posts,  
Kerala Circle, Trivandrum.

3 Postmaster General,  
Central Region, Cochin- 682 016. ... Respondents

By Advocate Mr George Joseph, ACGSC

ORDER

P SURYAPRAKASAM, JUDICIAL MEMBER

Applicant is working as a Sub Postmaster at Kakkanad Post Office, and this post she secured under the Biennial Cadre Review Scheme, and she took charge of the post on 3.7.92. Prior to this, since the applicant's health condition was not very satisfactory, she represented to the third respondent not to post her in the Postmaster category at all, and she may be allowed to continue in the same post at Ernakulam Bazar Post Office itself, on 30.5.92. By her letter dated 1.7.92, she has declined her promotion to higher selection grade under the Biennial Cadre Review Scheme. The said request was not acceded to, and the Superintendent of Post Offices promoted her and posted as Sub Postmaster, Kakkanad. The said Post Office was shifted to a new building with attached quarters

for the Postmaster. The applicant was residing at her own house, which was built with departmental loans itself at Padivattom, a short distance from Kakkanad, and the quarters also was not in a usable condition. Yet, the House Rent Allowance from January, 93 was not paid to her. Subsequently, by memo dated 14.6.93 (Annexure V), sanction has been accorded for payment of House Rent Allowance at eligible rate and arrears have been paid from January, 1993. Meanwhile, on 24.5.93 applicant has received a communication from Senior Superintendent of Post Offices, Ernakulam which reads as follows:

" A request for dequarterisation of Kakkanad P.O. may please be forwarded to this office urgently."

But even before this on 7.5.93 a letter was addressed under Annexure A3 by which Type III Quarter attached to Sub Postmaster, Kakkanad was allotted to one Shri PN Krishnan Nair, ADPS, Office of the Postmaster General, Central Region, Kochi and the said Krishnan Nair also occupied it at a subsequent date. According to applicant, suddenly in November, 93 her House Rent Allowance for the same month was cut and also another Rs 560/- was deducted from her salary for the earlier month. No specific order has been served on the applicant informing her under what provision the deduction is being made or effected or for what period. As against this deduction, she has approached this Tribunal by filing this application with the following prayers:

"(i) To call for the records relating to Annexure I and to quash the same.

(ii) To declare that the applicant is fully eligible to draw House Rent Allowance for the periods which she has not availed the quarters. *U*

- (iii) To direct the respondents to disburse the arrears of HRA not paid and recovered from the applicant for the above said period i.e., from November, 1993 onwards."

2 Respondents have filed a reply statement wherein they have stated that the quarters is intended for the occupation of Sub Postmaster of Kakkanad, and for nonoccupation, they relied on Rule she is not entitled to get House Rent Allowance. Further/5(c)(iii) of the General Rules and orders of the Department mentioned in Swamy's HRA & ECA is as follows:

- " 5 (a) xxx  
(b) xxx  
(c) A Government servant shall not be entitled to House rent allowance:  
x x x  
(iii) his wife/ her husband has been allotted 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!"

3 Since the applicant's husband who is also working in the same department getting House Rent Allowance, she is not entitled to get House Rent Allowance, and hence recovery order has been passed. It is a fact that the recovery order till this date has not been served on the applicant. However, during the course of arguments it has been specifically stated that the said order has been passed instructing the office to effect recovery of the past House Rent Allowance paid to her during nonoccupation of the quarters.

4 Counsel for applicant contended that the quarters were not ready. Water and electricity connections were not given till 26.6.93. Later on, it has been occupied by a superior

officer than the applicant and as such, the quarters was not vacant at all. Only subsequently, when the respondents issued a notice to the said ADPS to vacate the quarters, it was vacated on 15.2.94 and as such during this period at any rate, the applicant is entitled to get House Rent Allowance ( upto 15.2.94).

5        The Department relied on the letter dated 5.11.93 stated to have been issued by the applicant that the present arrangement can be continued and she is willing to forego House Rent Allowance admissible to her. However, counsel for applicant stated that this letter has been obtained under force, but I find that there is no allegation to this <sup>w/c</sup> pleadings. In her pleadings, she has specifically stated in her representation dated 5.11.93 addressed to the first respondent:

" I am willing to continue the present arrangement and also I am willing to forgo my HRA admissible to me."

6        With regard to the first contention made by the respondents, that Rule 5(c)(iii) is applicable, I am of the opinion that it is not applicable for the reason that when the quarters has been occupied by an employee, only the other person viz; wife or husband as the case may be, is not entitled to get any House Rent Allowance. In this case, neither the applicant nor her husband has occupied any quarters at all. Therefore, Rule 5(c)(iii) is not applicable to deduct any House Rent Allowance from the applicant on the ground that she is not entitled to get any House Rent Allowannce. *g*

The second argument advanced is that both the parties  
 dated 26.7.94  
 relied on the latest order/on Civil Appeal No.885/93 of the  
 Supreme Court wherein it has been stated that House Rent  
 Allowance is not a right, but was only a compensatory payment.  
 Counsel for respondent cited the following from the judgment:

"It must be remembered in this connection that the Government or the organisation of the kind of the appellant spends huge public funds for constructing quarters for their employees both for the convenience of the management as well as of the employees. The investment thus made in constructing and maintaining the quarters will be a waste if they are to lie unoccupied. The HRA is not a matter of right. It is in lieu of the accommodation not made available to the employees. This being the case, it follows that whenever the accommodation is offered the employees have either to accept it or to forfeit the HRA."

Whereas, the counsel for applicant brought to my notice the last para of the said order which reads as follows:

"While, therefore, setting aside the impugned order and allowing the appeal, we direct the appellant organisation to deduct the HRA from the salary of the respondent- employees only for the period the quarters which were offered to the employees remained vacant."

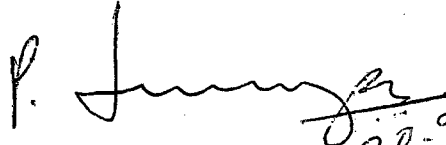
So, under the above said ratio, the Department is entitled to deny House Rent Allowance to the applicant only when the quarters remained vacant. The quarters was occupied till 15.2.94 by a superior officer and the House Rent Allowance thus collected from the said quarters is more than what could have been deducted from the applicant.

7 In this view of the matter, the application is allowed with direction to the respondent that no House Rent Allowance need be deducted from the applicant upto 15.2.94, and the

House Rent Allowance already deducted from the applicant will be returned to her within two months from the date of receipt of this order. For the rest of the period, payment of House Rent Allowance may be decided according to law.

8. There will be no order as to costs.

Dated the 30th day of September, 1994.

  
P SURYAPRAKASAM  
JUDICIAL MEMBER



List  
5555 of Annexures

1. Annexure-3 : True copy of Memo No.81dg/3-78/93 dated at Kechi 682016 the 7th May, 1993.
2. Annexure-5 : True copy of Memo No.A/49/III dated 14.6.1993, sanctioning the payment of normal House Rent Allowance at Eligible rate to the applicant.