

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.55/03

Thursday this the 27th day of November 2003

C O R A M :

HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

C.Sobhana
Work Assistant,
O/o.the Executive Engineer,
Lakshadweep Harbour Works,
Androth, Lakshadweep.

Applicant

(By Advocate Mr.Siby J Monippally)

Versus

1. Union of India represented by
Chief Engineer, Andaman &
Lakshadweep Harbour Works,
Port Blair.
2. Deputy Chief Engineer,
Lakshadweep Harbour Works,
Kavarathi.

Respondents

(By Advocate Mr.S.Radhakrishnan)

This application having been heard on 27th November 2003
the Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

The applicant Ms.C.Sobhana, working as Work Assistant in the Office of the Executive Engineer, Lakshadweep Harbour Works, Androth, Lakshadweep is seeking the benefit of double HRA after a period of interruption of four years from last date on which she claimed and got the benefit of double HRA. The case of the applicant is that she was transferred from Calicut (Mainland) to Androth (Island) on 3.5.1995 and her mother continued to remain in the mainland accommodation while she shifted establishment to Androth. As provided under rules she claimed and got the benefit of double HRA on the basis of the consideration that her mother continued to live in the establishment even after her transfer from the mainland to the island. Her mother died on

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26.8.1995, the establishment remained unoccupied and consequently the benefit of double HRA was discontinued. The applicant's son after his studies were completed in the island, shifted to Calicut to the applicant's vacant establishment with effect from 1.6.1999. The applicant claimed HRA at the mainland rate from that date and this was denied to her by the 2nd respondent, while she pressed her claim on the strength of the fact that the house has now been put to bonafide use. In support of her contention she cited a clarification of the Ministry of Finance which reads as follows :

Point 2 - Whether the benefit of HRA would be available to the Central Government employees who are keeping their families their own houses at the last place of posting.

Clarification - The concession will be available to those Central Government servants who are keeping their families in rented houses or in their own houses at the last place of posting and were in receipt of HRA at that place, in addition to the benefits available at the new place of posting till the concerned Government servants remain posted in the above-mentioned States/U.Ts.

2. The learned counsel for the applicant argued that in pursuance of this clarification the fact of bonafide use of residential accommodation at the old station is of critical importance and no other factor impinged on the application of the rules as the intention is to establish bonafide use and nothing else. He argued that the gap of four years between the last occupancy and later occupancy of residential accommodation in the mainland is explained by the fact that the son of the applicant was still prosecuting his studies at the station where the applicant (mother) was posted and there was no one else, who could live in the establishment after her mother's death.

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3. The learned counsel for the respondents invited my attention to G.I., M.F., O.M.No.11014/1/84-E.II(B), Dated 8.3.1988 Point (a) which contains a clarification of the matter, is reproduced below :

Point (a) - Whether the benefit of HRA would be available to those Central Government servants on their transfer in the States/UTs mentioned above who have shifted their families to a station other than the last place of posting or who brought their families to the place of their transfer/posting and claimed Transfer T.A., but later on sent their families to their last place of posting or to some other place due to certain reasons.

Clarification - The benefit of HRA referred to in this Ministry's OM, dated 29.3.1984, will not be admissible in such cases.

4. The counsel for the respondents argued that the intention of providing the double benefit was to compensate the creation of an additional establishment and thereby grant protection to the continuance of the establishment at the old station and hence intermittent movements between the old station and the new station were not to be reckoned for the material purpose of double benefit of HRA. The clarification of the Government he pointed out emphatically, disallows such benefit in cases where families have been sent back to the last place of posting later. In other words, she relied on the principle of continuity as the governing factor and not bonafide use of the establishment after interruption.

5. After hearing the counsels, I am inclined to agree with the point of view that continuity is infact a material factor in the application of this concession. The arguments of the counsel for the applicant that bonafide use is the only material factor is evidently not correct because bonafide use without continuity

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would not establish the factor of disruption of establishment which is so crucial to the grant of this concession; it would be infact be a case of termination of establishment, for whatever reason, disentitling the government servant to the concession. There is substance in the argument of the respondents that this benefit of double HRA is not merely a financial advantage being provided to somebody posted from the mainland to the island, it is inextricably connected with the very event of shifting of establishment. This argument has drawn substance from a series of orders issued between 1986 and 1988 by the Government of India in regard to the applicability of this special concession. The counsel for the applicant and the counsel for the respondents both invited attention to an earlier case decided by this Tribunal dated 25.1.2001 in which it was held that those employees transferred from the mainland to the island are entitled to the benefit of double HRA, while they are posted to the Union Territory of Lakshadweep, if they keep their families in places where they have been keeping their families while they are posted in the mainland. The counsel for the applicant cited this judgement to strengthen his argument that as long as a person was posted in the island of Lakshadweep he would be entitled to the benefit of double HRA, provided he puts his house in the old station to bonafide use. The counsel for the respondents cited this judgement to drive home the point that the operative portion of the judgement (keep, where they have been keeping) is indicative of the requirement of a condition for the grant of the double benefit, and that condition is 'keep, where they have been keeping their families'. This, the counsel argued, is the principle of continuity. Thus, the benefit would be available only in a case where an employee leaves behind an

14.6.2001

(Dated the 27th day of November 2003)

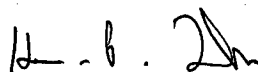
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Replaced with the corrected orders (p-5).
as proceedings dt. 28-1-2004.

establishment (not merely a house) for meeting the transfer obligation of moving to the island. Evaluating this line of argument in the light of the spirit of the special dispensation, I find that the belated event of a son maturing to return home in the mainland to define an 'establishment' is a non-event as far as the claim for double HRA is concerned. The rupture in continuity has taken away the very basis of the claim.

6. In the light of what is stated above, I find no substance in the application. The application is dismissed.

(Dated the 27th day of November 2003)



H.P.DAS
ADMINISTRATIVE MEMBER

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