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OF C.A.T. & A.C.G. DURE) RULES

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.Nos.533/96 & 563/96

Monday this the 7th day of July, 1997.

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

O.A.533/96

1. N.Krishnan Nair,
Higher Grade Postal Assistant,
Trivandrum University Post Office,
Trivandrum-695034.
 2. K.Ramachandran Nair, Postal Assistant,
ISRO Post Office, Trivandrum-695022.
 3. K.Rajan Babu,
Sub Postmaster, Pallipuram Post Office,
Trivandrum-695316.
 4. K.Sasidharan Nair,
Postal Assistant, ISRO Post Office,
Trivandrum-695022.
 5. M.Natarajan, Postman,
Chempazhanthi Post Office,
Trivandrum-695507.
 6. Jacob Thapas, Postman,
Karyavattom Post Office,
Trivandrum.
- ... Applicants

(By Advocate Mr. Thomas Mathew)

Vs.

1. Senior Post Master, General Post Office,
Trivandrum-695001.
 2. Senior Superintendent of Post Offices,
Trivandrum (N) Division,
Trivandrum.
 3. Chief Post Master General,
Kerala Circle, Trivandrum.
 4. Union of India, represented by its
Secretary, Department of Posts,
New Delhi.
 5. Postmaster, Attingal.
- ... Respondents

(By Advocate Mr. James Kurien, ACGSC)

O.A. 563/96

R.Rajalakshmi Sarma,
Sub Postmaster,
Kaniyapuram PO,
Trivandrum Dist.

... Applicant

(By Advocate Mr.Thomas Mathew)

Vs.

1. Postmaster, Attingal.
2. Senior Superintendent of Post
Offices, Trivandrum North Division,
Trivandrum.
3. Chief Post Master General,
Kerala Circle, Trivandrum.
4. Union of India, represented
by its Secretary, Department of
Posts, New Delhi.

.. Respondents

(By Advocate Mr. T.R.Ramachandran Nair)

The applications having been heard on 7.7.1997, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

Identical questions of facts and law are involved in both these cases and therefore they are being considered and disposed of together. The facts can be briefly stated thus. The six applicants in OA 533/96 and the only applicant in OA 563/96 were working within the Sreekaryam Village Panchayat area either in Chempazhanthi or Karyavattom. Based on the presidential sanction communicated by the Ministry of Finance O.M.No.N.11023/4/E.II(B)/75 dated 19.08.1975 the applicants as Central Government employees working in the Sreekaryam Village Panchayat area were granted House Rent Allowance at Trivandrum City rates on production of dependency certificate by the District Collector. The sanction by order dated 19.8.75 was only for a period of three years.

Based on this sanction the Director General, Department of Posts issued orders dated 30.1.86 and 1.5.89 respectively extending the benefit of HRA at Trivandrum City rates to the employees posted in Sreekaryam. While in the original order of the Ministry it was stated as follows:

"The President is accordingly pleased to decide that the Central Government servants having their places of duty in Sreekaryam Village Panchayat may be granted the House Rent Allowance at the same rate as is appropriate to those posted within the classified town of Trivandrum subject to fulfilment of the conditions laid down in the Office Memorandum dated 27.11.65 as amended from time to time."

(emphasis supplied)

In the subsequent order issued by the Directorate of Postal Services what was stated was:

"The President is accordingly pleased to decide that regular departmental postal employees having their place of duty in Sreekaryam may be granted HRA at the same rate as appropriate to those posted within the qualified city of Trivandrum subject to the fulfilment of the conditions laid down in the Ministry of Finance OM dated 27.11.65..."

(emphasis supplied)

The "Village Panchayat" was omitted. Based on the original sanction employees who were posted in Sreekaryam Village Panchayat area were continuously given the HRA at Trivandrum city rate. This was continued upto 31.12.91. The applicants received HRA at the Trivandrum city rate.

2. Thereafter on 25.4.96 the Senior Superintendent of Post Offices, Trivandrum North Division by the impugned orders in these two cases directed the Senior Post Master

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Trivandrum GPO and Post Master, Attingal H.O. to recover from the pay and allowances of the applicants the alleged excess payment of HRA at Trivandrum city rates from the staff who worked at Karyavattom prior to 1.3.91 and the staff who worked in Chempazhanthy prior to 1.11.92. Aggrieved by this the applicants have filed this application praying that the impugned order may be quashed that it may be declared that the proposed recovery from the pay and allowances of the applicants is illegal and arbitrary and a direction be given to respondents not to recover any amount from the applicants. The applicants contend that as they were during the relevant period working within the Sreekaryam Village Panchayat area they were covered by the presidential sanction and payment made to them during the period was perfectly justified. The action on the part of the respondents in ordering recovery of the HRA paid during the period after such a long lapse of time without even a notice to them is illegal and unsustainable, contend the applicants.

3. The respondent seek to justify the impugned action on the ground that in the orders extending the benefit of HRA at Trivandrum City rates to the Central Government employees posted in Sreekaryam, by orders of the Directorate of Posts, did not mention "Sreekaryam Village Panchayat" and therefore only those Central Government employees who were posted in "Sreekaryam" alone were entitled to the receipt of HRA at Trivandrum city rates.

4. After perusing the pleadings and materials in this case and on hearing the learned counsel appearing for the parties, I am of the considered view that the contention raised by the respondents that the applicants were not

covered by the presidential sanction for grant of HRA at Trivandrum City rates for the period in question is untenable. In the reply statement of the respondents, itself it is made clear that the original order by which presidential sanction was accorded for payment of HRA mentioned "Sreekaryam Village Panchayat" and that in the subsequent orders issued by the Directorate basing on the original sanction, the suffix "Village Panchayat" was omitted. For such an omission the applicants who were otherwise entitled as per the presidential sanction cannot be deprived of the benefit conferred on them by the presidential sanction. The Director General, Department of Posts is not the competent authority to sanction HRA at city rates but such a sanction has to come from the Ministry of Finance under presidential sanction. The sanction covered the applicants who were working within the Sreekaryam Village Panchayat area and therefore the omission on the part of the Director General, Department of Posts to cover them also in the subsequent orders extending the benefit cannot have any adverse effect on the applicants who were otherwise entitled to the benefit. In any case assuming for arguments sake, that by virtue of the omission in the subsequent orders, the applicants were not really entitled to get the HRA, the right of the respondents to recover the same from the applicants is a debatable one. The applicants were not responsible for any erroneous payment if the payments were erroneous. They did not suppress any material facts. The respondents themselves paid to the applicants who are low paid employees, the HRA for a period. In these days of inflation a low paid employee cannot be expected to accumulate money which he received by way of pay and allowances every month. The

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moment pay is received it is spent. It is absolutely unjust and arbitrary to direct such employees to refund the amount, even if erroneously paid by the respondents for reasons not attributable to them.

5. Further before taking a decision that the payment made to the applicants were ineligible payments, the respondents did not give an opportunity to the applicants to be heard. It is well settled by now that any order which has an adverse civil consequence cannot be passed without giving that person an opportunity of being heard. No such opportunity was given in this case.

6. In the light of what is stated above, I am of the considered view that the impugned orders and the proposed action cannot be sustained. I therefore, set aside the impugned orders declaring that on the basis of the impugned order the respondents are not entitled to recover any amount from the pay and allowances of the applicants and direct the respondents not to do so.

7. The applications are allowed. There is no order as to costs.

Dated the 7th day of July, 1997.

Sd/-
A.V. HARIDASAN
VICE CHAIRMAN

ks.

CERTIFIED TRUE COPY
Date

Deputy Registrar