

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 7.2.1990

P R E S E N T

HON'BLE MR.A.V.HARIDASAN - JUDICIAL MEMBER

ORIGINAL APPLICATION NO.565/89

P.C.Thomas - Applicant

Versus

1. Director Maintenance,
Southern Telecom Sub
Region, Ernakulam,
Cochin-682 016.
2. Accounts Officer,
Southern Telecom
Sub Region,
Ernakulam,
Cochin-682 016.
3. Chief General Manager,
Southern Telecom Region,
Madras-600 001. - Respondents.

M/s Sebastian Paul &
Subal J Paul - Counsel for applicant

Mr.PS Biju, ACGSC - Counsel for respondents

O R D E R

The prayers of the applicant in this application are

- (i) to quash the Ext.P-1 order dated 11.12.1987 of the second respondent directing the recovery of a sum of Rs.11,428.85, on the ground that so much amount was paid to him irregularly as House Rent Allowance (ii) to direct the respondent to refund the amount already recovered pursuant to Ext.P-1 order (iii) to direct the respondents to pay 10% of the pay of the applicant as additional House Rent Allowance in lieu of rent free accommodation and

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also the consequential benefits. 5

2. Shorn of unnecessary details the facts of the case can be succinctly^e stated thus.

3. The applicant having joined in the Telecom Department in 1962 was promoted as Assistant Engineer and was posted as Assistant Engineer, Coaxial maintenance, Ernakulam in 1976. The applicant was not allotted a Government Quarters of Type-IV. The claim of the applicant is that since he was posted as Assistant Engineer, Coaxial maintenance, Ernakulam ^{was} he ~~is~~ entitled to free residential accommodation or additional HRA at the rate of 10% of his pay in addition to the normal HRA in lieu of the rent free accommodation. The applicant was drawing normal HRA from 25.4.1977 to 5.9.1984. His claim for difference in the HRA paid to him and actually due for the period from 9.10.1962 to 31.8.1967 has already ^{been} ~~is~~ agreed ^{by} the department, and so in this application the applicant is not making any claim in that regard. The third respondent has by impugned order dated 11.12.1987 directed the recovery of a sum of Rs.11,428.85 being HRA drawn by the applicant from 25.4.1977 to 5.9.1984 on the ground that drawal was irregular. The applicant claims that he was Assistant Engineer, Coaxial Maintenance, that therefore, he was entitled to either a rent free accommodation or additional HRA of 10% of his pay, that the

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impugned order directing recovery of the HRA irregularly drawn by him is not sustainable, and that the reason mentioned by the respondents for this action a departmental quarters in which he was also living is not a proper ground to disallow his claim for HRA, that infact the applicant had to arrange his own accommodation incurring huge expenditure, and that for these reasons the applicant is entitled to claim not only the normal HRA but also additional HRA, 10% of the basic pay. The applicant has therefore prayed that respondents may be restrained from recovering the amount pursuant to the Ext.P-1 order, and that they may also be directed to pay the arrears of additional HRA due to him.

4. The application is resisted by the respondents in the reply affidavit. The main ground on which the claim in the application is resisted are: (1) the applicant not being appointed to a post of Assistant Engineer, Coaxial maintenance but only Assistant Engineer, Coaxial (Out-doors), he was not entitled to the rent free accommodation (2) Since a type II quarters was allotted to the wife of the applicant, Mrs. Leela Thomas who was also working in the same department at the same station and as the applicant had been residing in that quarters along with his wife, he is not entitled to claim any HRA.

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5. I have heard the arguments advanced on either side and have also carefully gone through the documents produced. According to Sub clause 3 of Clause 'C' of Rule 5 of Compensatory (City) Allowance and rent allowance Rules, a Government servant shall not be entitled to HRA if his wife/her husband has been 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., even ^{when ✓} ~~when~~ he/she resides separately in accommodation [✓] ~~when~~ rented by him/her. The respondents have produced Annexure-R2(b), an order issued from the Office of the General Manager, Maintenance, Southern Telecom. Region, Madras-1 allotting a type II quarters to Mrs. Leela Thomas, wife of the applicant, ^{with ✓} ~~with~~ copy to the applicant.

It reads as follows:

"The type II old quarters(carrier) on its vacation by Shri V.K.Ramachandramenon, R.A., Ernakulam is hereby allotted to Smt.Leela Thomas, R.A., Ernakulam under the following conditions. 1. The quarters is not required by no other R.As senior to her. 2. As Shri P.C.Thomas, husband of Smt.Leela Thomas, is also working as A.E. in the same station, no HRA is payable to him under the orders for the period of occupation of departmental quarters by Smt.Leela Thomas.

After satisfying the condition at no.1 above, the quarters may be permitted to be occupied by Smt.Leela Thomas after obtaining declaration from Shri Thomas regarding condition 2."

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Pursuant to this order the quarters of type II was allotted to Smt. Leela Thomas. The applicant though was informed by Annexure-2(b), that he would not be entitled to HRA in view of the allotment of quarters to his wife who was also serving in the same department in the same station, he did not object it or make any claim against it. Therefore, I am of the view that, the applicant should not have drawn the HRA. Hence it is to be held that the respondents are right in recovering the amount which was wrongly paid to him. Regarding the claim of the applicant to the additional HRA also, as per rules his wife working in the same station, has been allotted a Government quarters, he would not be entitled to any HRA. Therefore, that part of the claim also is not sustainable.

6. In view of the above finding based on the non-entitlement of the applicant to claim HRA ^{and} in the circumstances mentioned above, I am of the view that it is not necessary to go into the question whether the applicant was working as Assistant Engineer, Coaxial maintenance or not. So, the question is not being gone into.

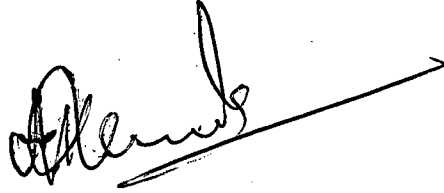
7. In view of what is stated in the foregoing paragraph I am of the view that the grievance of the applicant has no legitimate basis and that ^{W. he is} not entitled

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to any relief. The application fails and the same is dismissed.

8. There is no order as to costs.

A handwritten signature in dark ink, appearing to be 'A.V. Haridasan', written over a long, thin horizontal line that extends to the right.

(A.V.HARIDASAN)
JUDICIAL MEMBER
7.2.1990.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

RA-48 of 1990 in

O. A. No. 565 of

T. A. No.

1988

DATE OF DECISION 18-6-1991

PC Thomas Review Applicant (x)

M/s K Ramakumar &
VR Ramachadran Nair Advocate for the Applicant (s)

Versus

Director, Maintenance, Respondent (s)
Southern Telecom Sub Region,
Ernakulam & 2 others

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. AV Haridasan, Judicial Member

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes.*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

The original application was filed challenging the Exbt.P1 order dated 11.12.1987 directing the recovery of a sum of Rs.11,428.85 from the applicant alleging that so much amount was paid to him as House Rent Allowance(HRA) illegally and also praying that the respondents may be directed to refund the amount already recovered from him and also to pay him additional HRA @ 10% of the basic pay. The applicant alleged that as Assistant Engineer, Coaxial Maintenance, Ernakulam he was entitled to rent free accommodation or 10% of the basic pay as additional HRA and that the action of the respondents in denying them on the ground that he was

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living along with his wife who also is an employee of the same department in a quarters allotted to her is unjustified. The application was resisted by the respondents on two grounds: 1) that the applicant was not working at the relevant period in a post which entitled him ^{to} free residential accommodation or additional HRA of 10%, and 2) that as he was residing in a quarters allotted to his wife as a Government employee of the same department, according to Sub Clause 3 of Clause C of Rule 4 of Compensatory(City) Allowance and Rent Allowance Rules, he was not entitled to get any HRA and that the impugned order was issued only to recover the HRA irregularly paid. After hearing the counsel on either side, by the final order dated 7.2.1990 in the original application, the claim of the applicant was rejected. It was held that since the applicant was during the period from 25.4.1977 to 5.9.1984 to which the alleged irregular payment of HRA ^{related}, residing with his wife Smt. Leelamma in quarters allotted to her being informed by a communication marked as Annexure-2(b) that as long as he stayed in the quarters with his wife, he would not be entitled to draw HRA, the drawal of HRA by the applicant during period in question was irregular and that the respondents were right in recovering the amount. On the basis of the above finding, without going into the question whether the applicant was working in a post which entitled him to rent free accommodation or not, the application was dismissed.

2. Now the applicant has filed the review application. The review applicant prays that on 2 grounds namely, 1) that the factual details to establish that the applicant was not working in a post which entitle him to rent free accommodation had not been made available, this Tribunal had been misled on that aspect, and 2) that the applicant being entitled to rent free accommodation if so allotted, ^{if} ^{was allotted} ~~the quarters~~ ^{in his} name his wife could have saved 10% of her salary which was recovered during the period when he also was residing in the quarters. According to the applicant, as per the note to Sub Clause 3 of Clause C of Rule 5 of Compensatory(City) Allowance and Rent Allowance Rules, the applicant would have had a choice to claim HRA and that therefore this aspect having been lost sight of, the finding is liable to be reviewed.

3. I have heard the arguments of the learned counsel on either side and have also gone through the order sought to be reviewed and the connected records. Since the finding in the original application was not ^{based} ~~based~~ on a decision on the question whether the applicant was working in a post which entitle him to rent free accommodation or additional HRA of 10% in lieu of rent free accommodation or not, there is no merit in the contention that for want of details that question which had to be determined could not be properly decided. The next ground canvassed in the review application also has

no force. The applicant did not get the quarters allotted in his name nor did he get order for sharing of accommodation with liberty to claim HRA. The applicant was by Annexure-2(b) dated 29.3.1977 informed that the allotment of quarters to his wife Smt. Leelamma would be on a condition that he would not be eligible for HRA as long as he lived in the quarters with Smt. Leelamma. The allotment was made on the above basis. Since the applicant did not object to Annexure-R2(b), it was held in the order sought to be reviewed that the drawal of HRA by him during the period in question was irregular and that the impugned order directing recovery thereof is perfectly valid. It was also held that as the applicant was residing in a quarter with his wife, he was not entitled to claim additional HRA. I do not find any error apparent in the face of records or any new material which would warrant a review of the order. Hence, the review application is without any merit and the same is dismissed. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER
18.6.1991